

19 MARCH 1947

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19 MARCH 1947

I N D E X  
O f  
E X H I B I T S

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
367	2380		Telegram re the German Minister's Advice on the Retrocession of the Liaotung Peninsula dated 23 April 1895		18777
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1                   Wednesday, 19 March 1947  
2                   - - -  
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5                   INTERNATIONAL MILITARY TRIBUNAL  
6                   FOR THE FAR EAST  
7                   Court House of the Tribunal  
8                   War Ministry Building  
9                   Tokyo, Japan  
10  
11  
12                  The Tribunal met, pursuant to adjournment,  
13                  at 0930.  
14                  - - -  
15                  Appearances:  
16                  For the Tribunal, same as before with the  
17                  exception that HONORABLE LORD PATRICK, Member from the  
18                  United Kingdom of Great Britain, is now sitting; and  
19                  HONORABLE JUSTICE JU-AO MEI, Member from the Republic  
20                  of China, not sitting.  
21                  For the Prosecution Section, same as before.  
22                  For the Defense Section, same as before.  
23                  - - -  
24                  (English to Japanese and Japanese  
25                  to English interpretation was made by the  
                    Language Section, IMTTFE.)

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1                    MARSHAL OF THE COURT: The International  
2                    Military Tribunal for the Far East is now in session.

3                    THE PRESIDENT: All the accused are present  
4                    except OKAWA and MATSUI. We have a certificate from  
5                    the prison surgeon at Sugamo to the effect that  
6                    MATSUI is too ill to attend the trial today. The  
7                    certificate will be recorded and filed. Both the  
8                    absent accused are represented by counsel.

9                    Colonel Warren.

10                  MR. WARREN: If the Tribunal please, prob-  
11                  ably the Tribunal realizes we started a little  
12                  abruptly yesterday, and we could not locate Mr.  
13                  OKAMOTO who was preparing other phases of our section;  
14                  but he is here now and desires to continue reading  
15                  the opening statement.

16                  THE PRESIDENT: I understand this learned  
17                  counsel speaks English well; and, if he would like  
18                  to read this in English, we would be happy to hear  
19                  him. Some of my colleagues prefer to hear English  
20                  in the first place. However, counsel has the option  
21                  of using English or Japanese as he chooses.

22                  MR. T. OKAMOTO: Mr. President, Members of  
23                  the Tribunal, I continue reading the opening state-  
24                  ment for the Manchurian division:  
25

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PART II. THE MUKDEN INCIDENT AND AFFAIRS

1      INCIDENT THERETO:

2            We will show that on September 18, 1931,  
3      between 10 and 10:30 p.m., Lieutenant KAWAMOTO of the  
4      Japanese Garrison at Mukden, who was patrolling along  
5      the South Manchurian Railway, heard an explosion and  
6      was fired upon by Chinese troops. He returned the  
7      fire and reported to the commander of No. 3 Company,  
8      Captain KAWASHIMA, who was engaged in night maneuvers  
9      some 1500 yards to the north. At the same time  
10     Lieutenant KAWAMOTO telephoned to Lieutenant Colonel  
11     SHIMAMOTO, Battalion Commander at Mukden, who in turn  
12     communicated with garrison commander Colonel HIRATA.  
13     We will show that subsequent actions of these offi-  
14     cers were prompted by sheer necessity for self-  
15     defense due to the precarious position in which both  
16     the Japanese residents and garrison found themselves  
17     in this emergency; the lives and property of 200,000  
18     Japanese and 800,000 Koreans being protected only by  
19     10,000 soldiers of the Kwantung Army who were stretched  
20     out over the length of 1000 kilometers of the Railway  
21     Zone and who were surrounded by more than 200,000  
22     hostile troops of Chang Hsueh-liang.

23           Lieutenant General HONJO, commander of the  
24     Kwantung Army, realized, as the evidence will show,

that the only way to protect his countrymen from  
1 disaster was to seize the enemy headquarters. The  
2 Lytton Report recites that he ordered the fleet at  
3 Port Arthur to go to Yinkow (p. 69); but the evi-  
4 dence will show that his urgent request was not an  
5 order and was refused by the fleet commander, Rear  
6 Admiral TSUDA. It will also be shown that his re-  
7 quest for Korean Army reinforcements was refused  
8 by the order of Tokyo. Such facts show the unex-  
9 pected occurrence of the Mukden Incident and the  
10 absence of any common plan or cooperation among  
11 the authorities concerned.

13 The evidence will show that when the Tokyo  
14 Government received news from Mukden early in the  
15 morning of the 19th of September, 1931, they de-  
16 cided upon a non-expansion policy which decision was  
17 immediately telegraphed to Lieutenant General HONJO,  
18 and that they also denied the request from the  
19 Korean Army for permission to despatch reinforce-  
20 ments to Manchuria. The War Minister immediately  
21 sent Colonel ANDO to Mukden to make an investigation,  
22 the result of which will be shown by evidence.

23 In the afternoon of the 19th, Geneva time,  
24 Mr. YOSHIZAWA, Japanese Chief Delegate to the League  
25 of Nations, announced to the Council that the fighting

1 at Mukden would be localized. The defense will show  
2 that this statement and other publications and  
3 assurances given were made in good faith but that  
4 there were unforeseen events, aggravations and de-  
5 velopments.

6 Evidence will show how Lieutenant General  
7 HONJO faced a dilemma as between the instruction of  
8 the home government, which apparently minimized the  
9 existing dangers, and the urgent cries for help from  
10 residents in Manchuria. He, being the sole judge  
11 of the requirements for self-defense, rushed small  
12 detachments to the defense of Changchun and Kirin.  
13 Evidence will also clarify the circumstances which  
14 necessitated the despatch of a mixed battalion of the  
15 Korean Army on the 21st September by its commander,  
16 Lieutenant General HAYASHI, without knowledge or  
17 consent from Tokyo. By the end of the month, how-  
18 ever, the governmental instructions will be shown  
19 to have been carried out and all Japanese troops  
20 were withdrawn to the Railway Zone, despite repeated  
21 requests for protection from residents in Harbin.

23 The clashes in Mukden and Changchun were  
24 only of a few hours' duration. There were no real  
25 hostilities in Manchuria until the so-called Nonni  
Bridge operation in early November 1931. Even then

1 the cause was rivalry between General Ma Chan-shan  
2 and General Chang Hai-peng for leadership of Heilung-  
3 kiang Province, which led to the destruction of rail-  
4 way bridges. A Japanese repair party was fired  
5 upon by Ma's troops. Evidence will show that  
6 Japanese authorities held prolonged diplomatic  
7 negotiations before the Kwantung Army took steps  
8 for repulsing Ma Chan-shan from the Tsitsihar area.  
9 Thereafter, immediate evacuation was effected in  
10 conformity with instructions from Tokyo. In the  
11 latter part of November the Kwantung Army sent a  
12 force towards Chinchow in support of the Japanese  
13 garrison at Tientsin, and later withdrew to the  
14 original position, "to the great surprise of the  
15 Chinese," as the Lytton Report states (p. 77).  
16

17 During this time, the primary responsibility  
18 of the Kwantung Army was the protection of residents  
19 and property. Evidence will be produced of the out-  
20 rages committed by bandits before and after the  
21 Mukden Incident. It was, therefore, essential and  
22 necessary for Japan to protect and reserve right of  
23 action against lawless elements. While being in full  
24 accord with the resolution of the League Council of  
25 December 10, 1931 for the cessation of hostilities,  
Japan could not well afford the risk of withholding

needed protection or of shifting such burden and responsibility to the Chinese who would likely be impotent to cope with the situation.

On the 10th of December, 1931, the WAKATSUKI Cabinet resigned en bloc and the opposition, the Seiyukai Party, formed a new cabinet under Mr. INUKAI as Premier. We will show that during December Chang Hsueh-liang's forces, having established headquarters at Chinchow, took advantage of the evacuation, in accordance with government policy, of the Kwantung Army, to march across the frozen Liao River to disturb the Mukden area, joining hands with local bandits. Prior to this, diverse diplomatic negotiations were carried on for the mutual withdrawal of troops and the establishment of a neutral zone. Evidence will show these came to naught because of infidelity on the Chinese side. A detachment of the Kwantung Army clashed on the 23rd December with Chang's troops, who were riding on an armored train towards Mukden. When the Japanese authorities announced a resolution to restore order in the Chinchow area, Chang's army retired, and residents in Chinchow were afforded protection by January 3, 1932.

In January, General Ting Chao revolted

1 against General Hsi Hsia of the Kirin Province and  
2 besieged the city of Harbin. We will show that the  
3 Japanese residents appealed for help and the Kwan-  
4 tung Army entered the city on the 5th February,  
5 restricting troop movements to the minimum neces-  
6 sary for adequate defense. Evidence will show that  
7 the policy of the INUKAI Cabinet was to restore  
8 peace and order in Manchuria and to provide pro-  
9 tection against bandits.

10 We will show that anti-Japanese boycotts  
11 and terrorisms spread all along the Yangtze River.  
12 Mob insurrection became imminent in Shanghai, and  
13 the Municipal Council proclaimed martial law on the  
14 28th January, 1932. Garrisons of the U. S. A.,  
15 Great Britain, France, Italy and Japan took posi-  
16 tions according to the defense program of the Inter-  
17 national Concession. The Japanese marines, in carry-  
18 ing out this program, were attacked by the 19th Route  
19 Army, an independent Chinese force. Evidence will  
20 show that the Japanese marines suffered heavy  
21 losses in defense of the concession. Rescue troops  
22 were despatched from Japan, and the Chinese troops  
23 retreated beyond the 20 kilometer limit asked for  
24 by the Japanese Commander.

25 Previously, the Japanese Government had

requested the good offices of the U. S. A., Great  
1 Britain, France and Italy to arrange a conference  
2 with the Chinese and welcomed an opportunity to dis-  
3 cuss an armistice which was signed on the 5th of  
4 May, 1932. We will show the circumstances of how  
5 Japan tried to localize hostilities and how, after  
6 establishment of a neutral zone, to avoid future  
7 conflicts, Japan evacuated immediately the whole  
8 expeditionary force, even renouncing the rights  
9 given by the Armistice for stationing troops.  
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1           PART III. SPECIAL FEATURES OF MANCHURIA

2           AND THE BIRTH OF MANCHUKUO

3           Manchuria was inhabited by the Manchus,  
4           who belonged to the Tungus tribe, the same as the  
5           Mongolians, Koreans and Japanese. The Manchus were  
6           distinctly different from the Hun race of China  
7           proper. The evidence will show that the Chinese,  
8           that is, Hun race, did not influence Manchuria in  
9           any great degree. However, the Manchus ruled China  
10          for three hundred years until the revolution of  
11          1911. The policy of the Manchu empire, that is, the  
12          Ching dynasty, was to keep Manchuria as the land of  
13          the Manchus forever and as "forbidden territory"  
14          for the Hun race. This restriction was rather  
15          relaxed in later days and became extinct after the  
16          1911 revolution. We will show, however, there was  
17          an inherent desire of the Manchus to preserve their  
18          territory from the revolutionary influence of China,  
19          and that this desire was shared by the Chinese  
20          immigrants who had fled from the turmoil of civil  
21          war and found peace and tranquility in Manchuria.

22           Manchuria was undeveloped and under-  
23          populated at the beginning of this century, but we  
24          will show that the benefits derived from activities  
25          of Japan and Korean residents invited an influx of

1 Chinese, which amounted to more than ten million  
2 persons within two score years.

3 The evidence will show that in 1920 Soviet  
4 Russia recognized the Mongolian People's Republic  
5 as an independent country. In 1922 Chang Tso-ling,  
6 who arose to generalissimo from a captain of brigands,  
7 declared independence of Manchuria and tried to  
8 establish separate diplomatic relations with other  
9 powers.

10 In 1929 Soviet Russia invaded Manchuria.  
11 At that time the Mukden regime under Chang "sueh-  
12 liang was using 90% of its revenue for military  
13 expenditures. Currency had depreciated more than  
14 100 times. The Manchurian people were aroused against  
15 the maladministration of the Chang family, and many  
16 hoped for the former emperor of the Ching dynasty  
17 to return to his ancestral home. We will show that  
18 following the Mukden Incident movements of Nan-  
19 churians came to the surface and were openly carried  
20 on to fulfill their long cherished aspirations.

22 On the 24th of September 1931, Mr. Yan Chin-  
23 kai was announced chairman of the Peace Preservation  
24 Committee of Fentien Province. On the 26th, General  
25 Psi Psi declared the independence of the Kirin  
Province. On the 27th, General Chang Chin-hui,

1 General Ting Chao, and General Wan Jui-hwa, with  
2 other Manchurians, formed an emergency committee  
3 for their Special Administrative District. On  
4 the 29th, General Tang Ju-ling announced full  
5 responsibility for the autonomy of the Jehol  
6 Province. On the same day, General Yu Chun-shan  
7 declared the autonomy of the Eastern Border District.  
8 On the 1st day of October General Chang Hai-peng  
9 announced the independence of Taonan. We will show  
10 that it would have been impossible for the Kwantung  
11 Army to have inspired so many independence move-  
12 ments in such a short time. Such movements, except-  
13 ing Mukden and Kirin, took place in areas where no  
14 Japanese troops were present. It will also be shown  
15 that the Tokyo government had repeatedly sent  
16 instructions to Japanese authorities in Manchuria not  
17 to intermeddle with any new regime movements of  
18 Manchuria.

19 We will show that concurrent with local  
20 movements for provincial independence, there was a  
21 popular movement for the restoration to the throne  
22 of the former Emperor Hsüang Tung, that is, Pu Yi.  
23 Evidence will show that Lao Tin-yu, a follower of  
24 Pu Yi, contacted General Hsi Ychia of Kirin and General  
25 Chang Hai-peng of Taonan, who, together with General

1 Chang Chin-hui and certain Mongolian princes, had  
2 been staunch supporters of the Ching dynasty. At  
3 the beginning of November 1931 representatives from  
4 these Manchurian provinces went to Tientsin to  
5 solicit Pu Yi's assistance.

6 The rivalry between General Chang Hui-  
7 peng and General Ma Chan-shan in October and  
8 November 1931 and the revolt of General Ting Chao  
9 and General Li Tu against General Hsi Hsia in  
10 January 1932 were settled amicably by the efforts  
11 of General Chang Chin-hui and other Manchurian  
12 officials. Evidence will show that Mr. Yu Ching-  
13 hau, leader of the movement for promoting "the  
14 territorial peace and people's welfare," advocated  
15 severance from the old regime and formation of a new  
16 state. On the 16th of February 1932 a conference  
17 was called in Mukden in the name of the North  
18 Eastern Administrative Council, consisting of  
19 General Chang Chin-hui, General Tsung Shih-yi,  
20 General Hsi Hsia, General Ma Chan-shan, General Tan  
21 Ju-lin, Prince Chawang, Prince Ling Sheng and Mr.  
22 Chao Hsia-pao. On the 18th of February 1932 the  
23 declaration of independence of Manchuria was pro-  
24 claimed by that council. By the unanimous vote of  
25 this council, Pu Yi was elected as the head of the

1 new state and on the 9th of March Pu Yi was  
2 nominated Regent of Manchukuo, to form the first  
3 government with Mr. Tsang Hsia-tsu as premier. The  
4 evidence will show that the independence of Man-  
5 chukuo was the inevitable consequence of a long  
6 existing tradition and desire of Manchurians.

7           PART IV. INTERNATIONAL PROBLEMS OF  
8           MANCHUKUO

9           The birth of the new state affected  
10 Japanese rights and residents therein, and a basis  
11 for their protection and peaceful cooperation with  
12 Manchuria was needed. The Nine Power Pact was not  
13 considered as being applicable, so the diet presented  
14 and passed a resolution to recognize Manchukuo. On  
15 September 15, 1932, General MUTO, the first Japanese  
16 ambassador to Manchukuo, signed a protocol with the  
17 premier, Tseng Hsia-tsu, whereby Japan recognized  
18 Manchukuo. We will show that the protocol and its  
19 attached articles were meant for the enhancement  
20 of independence and not as a limitation on sovereignty.  
21

22           The following undertakings were pledged  
23 thereby:

- 24           (1) That Japan would respect the inde-  
25 pendence and territorial sovereignty of Manchukuo.  
25           (2) That Manchukuo would encourage

1 cooperation of its different races to build up the  
2 nation for the benefit and prosperity of all.

3 (3) That Japan would support and assist  
4 Manchukuo with such means at her disposal.

5 (4) That Manchukuo would maintain peace  
6 and order, provide equal protection for all resi-  
7 dents and suppress brigandism and anti-foreignism.

8 (5) That Japan would receive equal treat-  
9 ment with all other nations.

10 (6) That Japan and Manchukuo would  
11 cooperate for joint defense.

12 (7) That friendly relations and economic  
13 cooperation between Japan, Manchukuo and China would  
14 be encouraged.

15 In April 1932 Ma Chan-shan revolted against  
16 the new state. Ting Chao and Li Tu joined forces with  
17 Ma but were defeated by joint operation of the  
18 Japanese and Manchukuoan armies. Ma lost his power  
19 but General Ting later became the governor of Antung  
20 Province and still later a privy councillor of  
21 Manchukuo. Su Ping-wen in November 1932 and Tan Ju-  
22 lin in February 1933 revolted against Manchukuo, but  
23 they were defeated likewise. We will show that  
24 these joint operations against rebels were carried  
25 out under an agreement to provide assistance in

1 maintaining peace and order in Manchukuo and with-  
2 out trespassing on territory of Russia or of China.

3 The report of the Lytton Commission was  
4 published and adopted by the League Council. Japan  
5 had to respect the independence of Manchukuo, and  
6 accordingly in March 1933 withdrew from the League  
7 under the provisions of paragraph 3, article I of  
8 the Convention. On the 31st of May 1933 Japan and  
9 China came to an understanding and the Tangku Truce  
10 was signed, thereby settling those matters affecting  
11 Japan, China and Manchuria.

12 We will show that a conference was opened  
13 in Dairen in July 1933 to discuss economic questions  
14 between China, Japan and Manchukuo. This paved the  
15 way to concluding several agreements in following  
16 years with regard to customs, postal, telegraphic  
17 and transportation matters. Restoration of friendship  
18 between China and Japan was complete and peace  
19 reigned in the Far East despite the action of the  
20 League of Nations.

21 We will show that on March 1, 1934 Pu Yi  
22 was enthroned as emperor of Manchukuo. During this  
23 period expressions of amity were exchanged between  
24 the United States and Japan. In April the Pope  
25 recognized Manchukuo. In May the Republic of Salvador

1 end, in October, the Republic of Dominica followed  
2 suit. In September 1934 and in March 1935,  
3 respectively, agreements between the U.S.S.R. and  
4 Manchukuo were signed for navigation rights on  
5 rivers and for the sale of the Chinese Eastern Rail-  
6 way. Between China and Japan three principles, of  
7 non-menace and non-aggression, defense against  
8 communism, and economic cooperation were declared  
9 and supported by governmental action. The Emperor  
10 of Manchukuo visited Japan in April 1935 and was  
11 cordially welcomed by the Japanese. Development of  
12 Manchukuo as a civilized state was rapid; peace  
13 and order were restored under modern systems of  
14 administration and judicature, in striking contrast  
15 to previous conditions of disorder and corrupt  
16 practices under the Chang regime.

17 We will show that the Japanese government  
18 proclaimed in August 1935 that she would abolish  
19 extra-territorial rights and waive her rights in  
20 the railway zone, which she carried out by December  
21 1937. We will show that Manchukuo's status of  
22 independence was recognized by Italy in November  
23 1937, by Spain in December 1937, by Germany in May  
24 1938, by Poland in October 1938, by Hungary in  
25 January 1939, by Slovakia in March 1939, by Rumania

1       in December 1940, by Bulgaria in May 1941, by Fin-  
2       land in July 1941, and by Croatia, Thailand and  
3       Denmark in August 1941; other international diplomatic  
4       and commercial relations will also be shown.

5                 We will show that the U.S.S.R. guaranteed  
6       the inviolability of the territory of Manchukuo by  
7       the Neutrality Pact of 1941 and the United States  
8       indicated willingness to recognize Manchukuo in the  
9       course of negotiations held in 1941.

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Part V. Domestic Affairs of Manchukuo.

1           1. Pu-Yi testified in such a way as to  
2           infer that his liberty had been completely lost after  
3           he left Tientsin and that his Government was a puppet  
4           of Japan. Evidence will be produced to destroy this  
5           inference. Evidence will be produced in respect to  
6           his handwriting, to his efforts to be restored as  
7           Emperor and his request for cooperation from the  
8           Japanese.  
9

10           The power of Pu-Yi as a modern monarch under  
11           constitutional limitations were different from former  
12           prerogatives of an Emperor of the Ching Dynasty where  
13           rule was absolute. We will show the powers of the  
14           Regent and the Emperor under the constitution of  
15           Manchukuo, and the duties of the minister of state  
16           and of other functionaries. Because of their ability,  
17           many Japanese, who we will show became citizens of  
18           Manchukuo, were solicited to become officials in the  
19           government of Manchukuo. The activity of various  
20           public bodies will be explained to point out their  
21           assistance in developing discussions of important  
22           domestic problems, voicing public opinion, and effect-  
23           ing cooperation among the various races resident in  
24           Manchukuo.  
25

2. We will show that the new government of

1 Manchukuo paid foremost attention to the liberation  
2 of the people from feudal customs and practices. A  
3 budget system for a modern state was introduced. They  
4 did away with the practice of issuing contracts to  
5 collect taxes. Rationalization of taxation abolished  
6 arbitrary impositions previously exacted under the  
7 Chang regime. A new currency was established,  
8 replacing more than 15 kinds of old currency of  
9 fluctuating value. Adjustment and regulation of new  
10 enterprises were accomplished to avoid wasteful dup-  
11 lication and competition in certain fields and to  
12 distribute benefits among the people over a wider  
13 area.

14 We will show that the five-year plan for  
15 industrial development of Manchukuo was not offensive  
16 to any country. Primary consideration was given to  
17 the benefit which the people would receive through  
18 conservation and utilization of the country's resources.  
19 We will show that the establishment of heavy industries  
20 was to secure a stable economy, essential to an  
21 independent nation, and to promote self-sufficiency  
22 to meet any crisis in the face of a world-wide tendency  
23 toward bloc economy. We will show the effort made to  
24 invite foreign capital and technique under the prin-  
25 ciple of equal opportunity. We will show that after

1 the abolition of extra-territoriality Japanese resi-  
2 dents were regulated under the same laws as other  
3 Manchurians.

4 We will show that legislation concerning opium  
5 and narcotics in Manchukuo, and the establishment of  
6 anti-opium hospitals, resulted in a decrease in the  
7 number of addicts. The ten-year plan to effect gradual  
8 prohibition was a just and practical measure. It  
9 allowed the stamping out of black market sources and  
10 gradual control and corrective measures to be taken  
11 toward total prohibition.

12 3. The defense will clarify many matters by  
13 evidence not made available or presented in detail to  
14 the Lytton Commission. In Manchukuo, policies and  
15 worthwhile changes of a legitimate nature were realized  
16 in the shortest time ever seen in the annals of any  
17 country. Recovery of peace and order, security of  
18 life and property from bandits and warlords, wholesale  
19 retrenchment of military expenditures, reduction of  
20 taxation, reform of currency and of financial system,  
21 abolition of extra-territoriality and encouragement  
22 of racial equality, enhancement of cultural and educa-  
23 tional institutions, and raising of standards thereof,  
24 and tremendous increase of national wealth and pros-  
25 perity of the people, all were achieved as a result

1 of mutual cooperation of citizens of Manchukuo under  
2 a sovereign and independent government.

3 I thank the Tribunal for hearing me through  
4 this humble statement which is now concluded.

5 Mr. Warren will offer documentary evidence  
6 relative to Part 1, that is, problems prior to the  
7 Mukden Incident.

8 THE PRESIDENT: I take it you have no objections  
9 to make, Mr. Comyns Carr? You suggested you might  
10 have them at the close of this opening.

11 MR. COMYNS CARR: What I said yesterday was  
12 that we would not object to the opening but would  
13 object to evidence tendered in support of certain parts  
14 of it when it was tendered, which I hope will be  
15 sufficient for our purposes.

16 THE PRESIDENT: Colonel Warren.

17 MR. WARREN, If the Tribunal please, some of  
18 the counsel have requested me to read this note to  
19 the Tribunal:

20 "It is desired to call attention to the fact  
21 that, as in the case of previous opening statements,  
22 individual accused may, owing to conflicting interests  
23 and diversity of defenses, in their individual phases,  
24 present evidence inconsistent with that outlined in  
25 this opening statement."

1 THE PRESIDENT: We appreciate that.  
2

2 MR. WARREN: Thank you, sir.  
3

3 For the benefit of the Language Section, I  
4 will commence with my running commentary now.  
5

5 THE PRESIDENT: Mr. Comyns Carr.  
6

6 MR. COMYNS CARR: Your Honor, with regard  
7 to the note just read by my learned friend, I submit  
8 that we are entitled to know at this stage which of  
9 the accused do not agree with parts of the statement  
10 just read and which parts they don't agree with.  
11

11 THE PRESIDENT: It may take a very long time  
12 to indicate that, and it may not help us in the least.  
13 Openings are frequently dispensed with altogether.  
14

14 It is not for me to say what Colonel Warren  
15 has in mind, but I suppose all of the accused agree  
16 with some of the opening, some do not agree with all  
17 of it or some of it.  
18

18 Of course, there is such a thing as fairness  
19 to the prosecution, and if you think it is fair to  
20 you that Colonel Warren should indicate on whose  
21 behalf the opening is made, well, we will invite him  
22 to do so.  
23

23 MR. COMYNS CARR: Your Honor, I would be  
24 prepared to waive the request so far as the opening  
25 statement is concerned. What we are particularly

1 anxious to know is which of the accused are adopting  
2 evidence as given and which are going to repudiate it.

3 THE PRESIDENT: Well, that doctrine that  
4 silence gives consent I know does not apply to every  
5 assurance in criminal proceedings. I had a recent  
6 occasion to realize that. Nevertheless, I think that  
7 we shall apply against every accused implicated, such  
8 evidence as is not expressly combated by particular  
9 accused; that is, if we believe the evidence and it  
10 is not combated generally.

Colonel Warren.

MR. WARREN: If the Tribunal please, it is  
the intention of counsel to begin the presentation of  
evidence on the part of the defense in the Manchurian  
division of its case by reading excerpts from the  
Lytton Report which were omitted by the prosecution.  
The Manchurian division, as has been pointed out, will  
be presented in five subsections. The first sub-  
section will deal with events preceding the so-called  
Mukden Incident. At this time we desire to read  
from page 13 of the Lytton Report, Chapter I, "Outline  
of Recent Developments in China." Inasmuch as we feel  
this is very important to the defense, we desire,  
if the Tribunal please, to read the entire chapter.

"Chapter I. Outline of Recent Developments

in China."

1                   THE PRESIDENT: Colonel Warren, before you  
2 start, I don't think you need try to paint the lily  
3 by giving us evidence confirming the Lytton Report  
4 findings. That would be quite unnecessary.  
5

6                   MR. WARREN: I am sorry, sir, I cannot  
7 interpret the meaning of the Court's remark, because  
8 I am reading from the Lytton Report, and I don't  
9 gather that we have told the Court that we were going  
10 to introduce any evidence to bolster the findings of  
11 the Lytton Report.

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1 THE PRESIDENT: I know you are reading the  
2 Lytton Report, but we don't want you to give evidence  
3 supplementing that report with the view to asking us  
4 to arrive at the same findings as the Lytton Report.

5 MR. WARREN: Oh, I see.

6 THE PRESIDENT: This is what you have in  
7 Part 1: "Problems prior to the Mukden Incident. The  
8 defense will confirm by evidence the statements in the  
9 Lytton Report."

10 I repeat, we don't want you to confirm the  
11 statements in the Lytton Report.

12 MR. WARREN: Well, your Honor, that may be  
13 misleading. What we intend to do is to show additional  
14 evidence that the Lytton Commission did not have. If  
15 they had had that it might be that their decision  
16 would have been different. On the basis of what they  
17 have, we do not contest it.

18 THE PRESIDENT: I don't think the prosecution  
19 have attacked a single finding or even a statement in  
20 the Lytton Report. And so there is no need for the  
21 defense to confirm by further evidence a single  
22 statement or finding in the Lytton Report.

23 I am placing no restriction on you. You can  
24 read as much of the Lytton Report as is relevant and  
25 material.

1           MR. WARREN: If the Tribunal please, does  
2 your Honor mean to state that the defense will not  
3 be able to present evidence which will clarify many  
4 matters not made available, presented in detail, to the  
5 Lytton Commission?

6           THE PRESIDENT: You can clarify anything  
7 the Lytton Report has left obscure. I refer to no  
8 such obscurities in the Lytton Report, nor did I  
9 quote what you are reading now.

10          I quote again what I quoted: "The defense  
11 will confirm by evidence the statements in the Lytton  
12 Report." That is what I quoted.

13          MR. WARREN: I am sorry, your Honor, I had  
14 explained to your Honor that that statement was per-  
15 haps misleading, that our intention was to introduce  
16 evidence which would clarify many matters in the Lytton  
17 Report which perhaps were not clear.

18          THE PRESIDENT: That is another matter which  
19 I did not raise, but which you raised.

20          MR. WARREN: That is right. I will proceed,  
21 your Honor.

22          "Chapter I. Outline of Recent Developments  
23 in China.

24          "The events of September 18th, 1931, which  
25 first brought the present conflict to the notice of

1 the League of Nations, were but the outcome of a long  
2 chain of minor occasions of friction, indicating a  
3 growing tension in the relations between China and  
4 Japan. A knowledge of the essential factors--"

5 THE PRESIDENT: Which part are you reading from?

6 MR. WARREN: Chapter I, your Honor, page 13,  
7 commencement of the first paragraph.

8 THE PRESIDENT: Are you reading from the  
9 start?

10 MR. WARREN: Yes, sir. I am on the second  
11 sentence now, your Honor.

12 "A knowledge of the essential factors in the  
13 recent relations of these two countries is necessary,  
14 to a complete understanding of the present conflict.  
15 It has been necessary, therefore, to extend our study  
16 of the issues beyond the limits of Manchuria itself  
17 and to consider in their widest aspect all the factors  
18 which determine present Sino-Japanese relations. The  
19 national aspirations of the Republic of China, the  
20 expansionist policy of the Japanese Empire and of the  
21 former Russian Empire, the present dissemination of  
22 Communism from the U.S.S.R., the economic and strategic  
23 needs of these three countries: such matters as these,  
24 for example, are factors of fundamental importance in any  
25 study of the Manchurian problem.

1 "Situated as this part of China is geograph-  
2 ically between the territories of Japan and Russia,  
3 Manchuria has become politically a center of conflict,  
4 and wars between all three countries have been fought  
5 upon its soil. Manchuria is in fact the meeting-  
6 ground of conflicting needs and policies, which them-  
7 selves require investigation before the concrete facts  
8 of the present conflict can be fully appreciated. We  
9 shall therefore begin by reviewing these essential  
10 factors seriatim.

11 "The dominating factor in China is the  
12 modernization of the nation itself which is slowly  
13 taking place. China today is a nation in evolution,  
14 showing evidence of transition in all aspects of its  
15 national life. Political upheavals, civil wars, social  
16 and economic unrest, with the resulting weakness of  
17 the Central Government, have been the characteristics  
18 of China since the revolution of 1911. Those condi-  
19 tions have adversely affected all the nations with  
20 which China has been brought into contact and, until  
21 remedied, will continue a menace to world peace and a  
22 contributory cause of world economic depression.

23 "Of the stages by which the present conditions  
24 have been reached only a brief summary can here be  
25 given, which in no sense aims at being a comprehensive

history. Throughout the first centuries of her intercourse with individual Occidentals, China remained, as far as Western influence is concerned, practically an isolated country. This condition of isolation was bound to come to an end when, at the beginning of the 19th century, the improvement of modern communication diminished distance and brought the Far East within easy reach of other nations, but in fact the country was not ready for the new contact when it came. As a result of the Treaty of Nanking, which ended the war of 1842, some ports were opened to foreign trade and residence. Foreign influences were introduced into a country whose Government had made no preparations to assimilate them. Foreign traders began to settle in her ports before she could provide for their administrative, legal, judicial, intellectual and sanitary requirements. The former therefore brought with them conditions and standards to which they were accustomed. Foreign cities sprang up in the Treaty Ports. Foreign methods of organization, of administration and business asserted themselves. Any efforts there may have been on either side to mitigate the contrast were not effective, and a long period of friction and misunderstanding followed.

"The efficacy of foreign arms having been

1 demonstrated in a series of armed conflicts, China  
2 hoped, by building arsenals and by military training  
3 according to Western methods, to meet force with force.  
4 Her efforts in this direction, restricted as they  
5 were in scope, were doomed to failure. Much more  
6 fundamental reforms were needed to enable the country  
7 to hold its own against the foreigner, but China did  
8 not desire such reforms. On the contrary, she wanted  
9 to protect her culture and dominion against them.

10 "Japan had to face similar problems when that  
11 country was first opened to Western influences: new  
12 contacts with disturbing ideas, the conflict of dif-  
13 ferent standards, leading to the establishment of for-  
14 eign settlements, one-sided tariff conventions and  
15 extra-territorial claims. But Japan solved these  
16 problems by internal reforms, by raising her standards  
17 of modern requirement to those of the West and by  
18 diplomatic negotiations. Her assimilation of Western  
19 thought may not yet be complete, and friction may some-  
20 times be seen between the old and the new ideas of  
21 different generations, but the rapidity and the tho-  
22 roughness with which Japan has assimilated Western  
23 science and technique and adopted Western standards  
24 without diminishing the value of her old traditions  
25 have aroused general admiration.

1           "However difficult Japan's problems of assimila-  
2       tion and transformation may have been, those faced  
3       by China were much more difficult, owing to the vast-  
4       ness of her territory, the lack of national unity of  
5       her people, and her traditional financial system, un-  
6       der which the whole of the revenue collected did not  
7       reach the central Treasury. Although the complexity  
8       of the problem which China has to solve may be so  
9       much greater than that which confronted Japan as to  
10      make unjust any comparison between the two, yet the  
11      solution required for China must ultimately follow  
12      lines similar to those adopted by Japan. The reluctance  
13      of China to receive foreigners and her attitude towards  
14      those who were in the country was bound to have serious  
15      consequences. It concentrated the attention of her  
16      rulers on resistance to and restriction of foreign  
17      influence, and prevented her from profiting by the  
18      experience of more modern conditions in the foreign  
19      settlements. As a result, the constructive reform  
20      necessary to enable the country to cope with the new  
21      conditions was almost completely neglected.  
22

23           "The inevitable conflict of two irreconcilable  
24      conceptions of respective rights and international  
25      relations led to wars and disputes resulting in  
         the progressive surrender of sovereign rights and the

loss of territory, either temporary or permanent. China  
1 lost a huge area on the north bank of the Amur River,  
2 and the Maritime Province; the Luchu Islands; Hong  
3 Kong; Burma; Annam; Tongking; Laos; Cochinchina (pro-  
4 vinces of Indo-China); Formosa; Korea; and several  
5 other tributary States; she also granted long leases  
6 of other territories. Foreign courts, administration,  
7 police and military establishments were admitted on  
8 Chinese soil. The right to regulate at will her tariff  
9 on imports and exports was lost for the time being.  
10 China had to pay damages for injuries to foreign lives  
11 and property and heavy war indemnities which have been  
12 a burden to her finances ever since. Her very  
13 existence was even threatened by the division of her  
14 territory into spheres of interest of foreign Powers.

15 "Her defeat in the Sino-Japanese war of  
16 1894-95, and the disastrous consequences of the Boxer  
17 uprising of 1900, opened the eyes of some thoughtful  
18 leaders to the necessity for fundamental reform. The  
19 reform movement was willing at first to accept the  
20 leadership of the Manchu House, but turned away from  
21 this dynasty after its cause and its leaders had been  
22 betrayed to the Empress Dowager, and the Emperor  
23 Kwang Hsu was made to expiate his hundred days of reform  
24 in virtual imprisonment to the end of his life in 1908.

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1                 "The Manchu Dynasty had ruled China for 250  
2 years. In its later years it was weakened by a  
3 series of rebellions: the Taiping rebellion (1850-  
4 1865), the Mohammedan risings in Yunnan (1856-1875),  
5 and the risings in Chinese Turkestan (1864-1877). The  
6 Taiping rebellion especially shook the Empire to its  
7 foundation and dealt a blow to the prestige of the  
8 dynasty, from which it never recovered. Finally,  
9 after the death of the then Empress Dowager in 1908,  
10 it collapsed through its own inherent weakness.

11                 "After some minor attempts at insurrection,  
12 the revolutionaries were successful in South China.  
13 A brief period followed during which a Republican  
14 Government was established at Nanking, with Dr. Sun  
15 Yat-sen, the leading figure of the Revolution, as  
16 provisional President. On February 12th, 1912, the  
17 then Empress Dowager, in the name of the child Emperor,  
18 signed a decree of abdication, and a provisional con-  
19 stitutional regime, with Yuan Shih-kai as President,  
20 was then inaugurated. With the abdication of the  
21 Emperor, his representatives in the provinces, prefec-  
22 tures and districts lost the influence and moral  
23 prestige which they had derived from his authority.  
24 They became ordinary men, to be obeyed only in so far  
25 as they were able to enforce their decisions. The

1 gradual substitution of military for civil governors  
2 in the provinces was an inevitable consequence. The  
3 post of central executive could, likewise, be held  
4 only by the military leader who had the strongest army  
5 or was supported by the strongest group of provincial  
6 or local military chiefs.

7 "This tendency towards military dictatorship,  
8 which was more apparent in the North, was facilitated  
9 by the fact that the army had gained some popularity  
10 by the support it had given in many instances to the  
11 Revolution. Military leaders did not hesitate to  
12 lay claim to the merit of having made the Revolution  
13 a success. Most of them were Northern leaders, to a  
14 certain extent grouped together in the so-called  
15 Peiyang Party --- men who had risen from a low status  
16 to higher commands in the model army trained by Yuan  
17 Shih-kai after the Sino-Japanese war. They could more  
18 or less be trusted by him because of the tie of personal  
19 allegiance which, in China, has not yet given place  
20 to the corporate loyalty which characterizes organiza-  
21 tions in the West. These men were appointed military  
22 governors by Yuan Shih-kai in the provinces under his  
23 control. There the power rested in their hands and  
24 provincial revenues could accordingly be taken at will  
25 by them to be used for their personal armies and

adherents.

"In the Southern provinces, the situation was different, partly as a result of intercourse with foreign countries and partly on account of the different social customs of the population. The people of South China have always been averse to military autocracy and official interference from outside. Dr. Sun Yat-sen and their other leaders remained faithful to the idea of constitutionalism. They had, however, little military force behind them, because the reorganization of the army had not yet progressed very far in the provinces south of the Yangtze, and they had no well-equipped arsenals.

"When, after much procrastination, the first Parliament was convened in Peking in 1913, Yuan Shih-kai had consolidated his military position, and lacked only sufficient financial resources to ensure the loyalty of the provincial armies. A huge foreign loan, the so-called Reorganization Loan, provided him with the necessary financial means. But his action in concluding that loan without the consent of Parliament brought his political opponents of the Kuomintang or Nationalist Party, under Dr. Sun's leadership, into open revolt. In a military sense the South was weaker than the North, and was still more weakened when the

1      victorious Northern commanders, after conquering a  
2      number of Southern provinces, placed the latter under  
3      Northern generals.  
4

5      "There were several attempts to reinstate  
6      the 1913 Parliament, which had been introduced by  
7      Yuan Shih-kai, or to convene bogus Parliaments, two  
8      attempts to establish monarchical rule, many changes  
9      of Presidents and Cabinets, continuous shifting of  
10     allegiance among military leaders, and many declara-  
11     tions of temporary independence of one or more provinces.

12     In Canton, the Kuomintang Government, headed by Dr. Sun,  
13     succeeded in maintaining itself from 1917 onwards,  
14     with occasional intervals during which it ceased to  
15     function. During these years China was ravaged by  
16     warring factions; and the ever-present bandits grew  
17     into veritable armies by the enlistment of ruined  
18     farmers, desperate inhabitants of famine-stricken  
19     districts, or unpaid soldiers. Even the constitution-  
20     alists, who were fighting in the South, were repeatedly  
21     exposed to the danger of militarist feuds arising in  
22     their midst.

23     "In 1923, convinced by Russian revolutionists  
24     that a definite program, strict party discipline; and  
25     systematic propaganda were necessary to ensure the  
victory of his cause, Dr. Sun Yat-sen reorganized the

1 Kuomintang with a program which he outlined in his  
2 'Manifesto' and 'Three Principles of the People'.  
3 Systematic organization ensured party discipline and  
4 unity of action through the intermediary of a Central  
5 Executive Committee. A political training institute  
6 instructed propagandists and organizers of local  
7 branches, while a military training institute at  
8 Whampoo, with the help of Russian officers, was instru-  
9 mental in providing the party with an efficient army,  
10 the leaders of which were permeated with the idea of  
11 the party. Thus equipped, the Kuomintang was soon  
12 ready to establish contacts with the people at large.  
13 Sympathizers were organized in local branches or in  
14 peasant and labor unions affiliated to the party.  
15 This preliminary conquest of the people's mind was,  
16 after the death of Dr. Sun in 1925, followed up by the  
17 successful Northern Expedition of the Kuomintang Army,  
18 which, by the end of 1928, succeeded in producing a  
19 nominal unity for the first time in many years, and a  
20 measure of actual unity which lasted for a time.

21 "The first, or military, phase of Dr. Sun's  
22 program had thus been brought to a successful end.  
23

24 "The second period of political tutelage under  
25 party dictatorship could begin. It was to be devoted  
to the education of the people in the art of self-

1 government and to the reconstruction of the country.

2 "In 1927, a Central Government was estab-  
3 lished at Nanking. It was controlled by the party --  
4 it was, in fact, merely one important organ of the  
5 party. It consisted of five Yuans or Boards (the  
6 Executive, the Legislative, the Judicial, the Control,  
7 and the Examination Boards). The Government had been  
8 modelled as closely as possible on the lines of Dr.  
9 Sun's 'Five-Power Constitution' -- the Trias Politica  
10 of Montesquieu with the addition of two old Chinese  
11 institutions, the Censorate and the Public Services  
12 Examination Board -- in order to facilitate the transi-  
13 tion to the final or constitutional stage, when the  
14 people, partly directly and partly through its elected  
15 representatives, would itself take charge of the  
16 direction of its government.

17 "In the provinces, similarly, a committee  
18 system was adopted for the organization of provincial  
19 governments, while in villages, towns and districts,  
20 the people were to be trained in the handling of local  
21 self-government. The party was now ready to put into  
22 operation its schemes of political and economic recon-  
23 struction, but was prevented from doing so by internal  
24 dissensions, the periodical revolt of various Generals  
25 with personal armies, and the menace of Communism. In

1 fact, the Central Government had repeatedly to  
2 fight for its very existence.

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1            "For a time unity was maintained on the sur-  
2       face. But not even the semblance of unity could be  
3       preserved when powerful war lords concluded alliances  
4       amongst themselves and marched their armies against  
5       Nanking. Though they never succeeded in their object,  
6       they remained, even after defeat, potential forces to  
7       be reckoned with. Moreover, they never took the position  
8       that war against the Central Government was an act of  
9       rebellion. It was in their eyes simply a struggle  
10      for supremacy between their faction and another one  
11      which happened to reside in the national capital and  
12      to be recognized as the Central Government by foreign  
13      Powers. This lack of hierarchical relations is all  
14      the more dangerous because serious dissensions in  
15      the Party itself have weakened the title of the  
16      Central Government to be the unquestioned successor  
17      of Dr. Sun. The new schism has led to the estrange-  
18      ment of influential Southern leaders, who retired to  
19      Canton, where the local authorities and the local  
20      branch of the Kuomintang frequently act independently  
21      of the Central Government.

22            "From this summary description it appears  
23      that disruptive forces in China are still powerful.  
24      The cause of this lack of cohesion is the tendency  
25      of the mass of the people to think in terms of family

1 and locality, rather than in terms of the nation,  
2 except in periods of acute tension between their  
3 own country and foreign Powers. Although there are,  
4 nowadays, a number of leaders who have risen above  
5 particularist sentiments, it is evident that a  
6 national outlook must be attained by a far greater  
7 number of citizens before real national unity can  
8 result.

9         "Although the spectacle of China's transi-  
10 tional period, with its unavoidable political, social,  
11 intellectual and moral disorder, is disappointing to  
12 her impatient friends and has created enmities which  
13 have become a danger to peace, it is nevertheless  
14 true that, in spite of difficulties, delays and  
15 failures, considerable progress has in fact been  
16 made. An argument which constantly reappears in the  
17 polemics of the present controversy is that China is  
18 'not an organized State' or 'is in a condition of  
19 complete chaos and incredible anarchy,' and that her  
20 present-day conditions should disqualify her from  
21 membership of the League of Nations and deprive her of  
22 the protective clauses of the Covenant. In this con-  
23 nection, it may be useful to remember that an alto-  
24 gether different attitude was taken at the time of  
25 the Washington Conference by all the participating

1 Powers. Yet, even at that time, China had two  
2 completely separate Governments, one at Peking and  
3 one at Canton, and was disturbed by large bandit  
4 forces which frequently interfered with communica-  
5 tions in the interior, while preparations were being  
6 made for a civil war involving all China. As a  
7 result of this war, which was preceded by an ultima-  
8 tum sent to the Central Government on January 13th,  
9 1922, when the Washington Conference was still in  
10 session, the Central Government was overthrown in  
11 May, and the independence of Manchuria from the  
12 Government installed at Peking in its place was  
13 declared in July by Marshal Chang Tso-lin. Thus,  
14 there existed no fewer than three Governments pro-  
15 fessing to be independent, not to mention the  
16 virtually autonomous status of a number of provinces  
17 or parts of provinces. Although, at present, the  
18 Central Government's authority is still weak in a  
19 number of provinces, the central authority is not,  
20 at least openly, repudiated, and there is reason to  
21 hope that, if the Central Government as such can be  
22 maintained, provincial administration, military  
23 forces and finance will acquire an increasingly  
24 national character. Those, among others, were  
25 doubtless the reasons which induced the Assembly of

1 the League of Nations last September to elect China  
2 to the Council.

3 "The present Government has tried to balance  
4 its current receipts and expenditure and to adhere to  
5 sound financial principles. Various taxes have been  
6 consolidated and simplified. In default of a  
7 proper budgetary system an annual statement has been  
8 issued by the Ministry of Finance. A Central Bank  
9 has been established. A National Financial Committee  
10 has been appointed, which includes among its members  
11 influential representatives of banking and commercial  
12 interests. The Ministry of Finance is also trying  
13 to supervise the finances of the provinces, where  
14 the methods of raising taxes are often still highly  
15 unsatisfactory. For all these measures the Government  
16 is entitled to credit. It has, however, been forced  
17 by recurrent civil wars to increase its domestic  
18 indebtedness by about a billion dollars (silver)  
19 since 1927. Lack of funds has prevented it from  
20 executing its ambitious plans of reconstruction,  
21 or completing the improvement of communications  
22 which is so vitally necessary for the solution of  
23 most of the country's problems. In many things, no  
24 doubt, the Government has failed, but it has already  
25 accomplished much.

1            "The nationalism of modern China is a  
2         normal aspect of the period of political transition  
3         through which the country is passing. National  
4         sentiments and aspirations of a similar kind would  
5         be found in any country placed in the same position.  
6         But, in addition to the natural desire to be free  
7         from any outside control in a people that has become  
8         conscious of national unity, the influence of the  
9         Kuomintang has introduced into the nationalism of  
10        China an additional and abnormal tinge of bitterness  
11        against all foreign influences, and has expanded its  
12        aims so as to include the liberation of all Asiatic  
13        people still subject to 'imperialistic oppression.'  
14        This is partly due to the slogans of its early com-  
15        munistic connection. Chinese nationalism today is  
16        also permeated by memories of former greatness, which  
17        it desires to revive. It demands the return of  
18        leased territories, of administrative and other not  
19        purely commercial rights exercised by a foreign  
20        agency in railway areas, of administrative rights  
21        in concessions and settlements, and of extra-  
22        territorial rights which imply that foreigners are  
23        not amenable to Chinese laws, law courts and taxation.  
24        Public opinion is strongly opposed to the continuance  
25        of these rights, which are regarded as a national

1       humiliation."

2                   THE PRESIDENT: This is a convenient break,  
3       Colonel. We will recess for fifteen minutes.

4                   (Whereupon, at 1045, a recess was  
5       taken until 1100, after which the proceedings  
6       were resumed as follows:)

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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Colonel Warren.

4 MR. WARREN: If the Tribunal please,  
5 unfortunately --

6 THE PRESIDENT: A member of the Tribunal  
7 would like to know what facts and charges you are  
8 trying to substantiate or repudiate, rather, in this  
9 case in producing the document. What are you trying  
10 to repudiate in reading this part of the Lytton  
11 Report?

12 MR. WARREN: Your Honor, we are not exactly  
13 attempting to repudiate anything. However, at the  
14 time this was originally read by the prosecution  
15 I requested the Tribunal at that time, in accordance  
16 with American practice, to permit me to read the  
17 portions of the document which the prosecution did  
18 not read.

19 THE PRESIDENT: Still what you read must  
20 be relevant and material. Are you making this point:  
21 that the condition of China warranted Japan's action  
22 in Manchuria?

23 MR. WARREN: Well, to a certain extent,  
24 your Honor. Undoubtedly the background and the  
25 chaotic condition that China was in at that time

1     certainly had an effect on Japan's actions and we  
2     want to show it. In addition to that, your Honor,  
3     the prosecution were allowed to read extracts even  
4     down to one sentence out of a paragraph, which  
5     would completely change the meaning of the entire  
6     thing, and we want to bring the true picture to the  
7     Tribunal as depicted in the Lytton Report in accord-  
8     ance with what we thought we would be able to do  
9     when this question was raised before.

10           THE PRESIDENT: Proceed to read.

11           MR. WAJEEH: If the Tribunal please,  
12     unfortunately Mr. Cole and I both have been suffering  
13     from a cold, a cold in our throats, and we would like  
14     to spell each other if we may.

15           THE PRESIDENT: The prosecution did so,  
16     but in the same interest. I don't see that a  
17     difference of interest would lead to a difference in  
18     a decision here. You may be relieved.

19           MR. COLE (Reading):

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1        "Foreign Powers have in general taken a sympathetic attitude towards these desires. At the  
2 Washington Conference, 1921-22, they were admitted to be acceptable in principle, though there  
3 was divergence of opinion as to the best time and method of giving effect to them. It was felt that  
4 an immediate surrender of such rights would impose upon China the obligation to provide administration,  
5 police and justice of a standard which, owing to financial and other internal difficulties, she could  
6 not at present attain. The present single issue of extra-territoriality might lead to a number of  
7 separate issues with foreign Powers if the former were abolished prematurely. It was also felt that  
8 international relations would not improve but would deteriorate if foreign nationals were to be exposed  
9 to the same unjust treatment and extortionate taxation as Chinese citizens were subjected to in so many  
10 parts of the country. In spite of these reservations,  
11 much was actually accomplished, especially at Washington, or as a result of that Conference. China  
12 has recovered two out of five leased territories,  
13 many concessions, administrative rights in the area  
14 of the Chinese Eastern Railway, Customs autonomy,  
15 and postal rights. Many treaties on the basis of

1 equality have also been negotiated.

2 "Having started upon the road of international  
3 co-operation for the purpose of solving her diffi-  
4 culties, as was done at Washington, China might have  
5 made more substantial progress in the ten years that  
6 have since elapsed had she continued to follow that  
7 road. She has only been hampered by the virulence  
8 of the anti-foreign propaganda which has been pursued.  
9 In two particulars has this been carried so far as to  
10 contribute to the creation of the atmosphere in which  
11 the present conflict arose -- namely, the use made  
12 of the economic boycott, to which reference is made  
13 in Chapter VII, and the introduction of anti-foreign  
14 propaganda into the schools.

15 "It is provided in the Provisional Constitution  
16 of China promulgated on June 1st, 1931, that 'the  
17 Three Principles of the People shall be the basic  
18 principles of education in the Republic of China'.  
19 The ideas of Dr. Sun Yat-sen are now taught in the  
20 schools as if they had the same authority as that  
21 of the Classics in former centuries. The sayings  
22 of the master receive the same veneration as the  
23 sayings of Confucius received in the days before  
24 the Revolution. Unfortunately, however, more atten-  
25 tion has been given to the negative than to the con-

1 structive side of nationalism in the education of  
2 the young. A perusal of the text-books used in the  
3 schools leaves the impression on the mind of a reader  
4 that their authors have sought to kindle patriotism  
5 with the flame of hatred, and to build up manliness  
6 upon a sense of injury. As a result of this virulent  
7 anti-foreign propaganda, begun in the schools and  
8 carried through every phase of public life, the  
9 students have been induced to engage in political  
10 activities which sometimes have culminated in attacks  
11 on the persons, homes or offices of Ministers and  
12 other authorities, and in attempts to overthrow the  
13 Government. Unaccompanied by effective internal  
14 reforms or improvements in national standards, this  
15 attitude tended to alarm the foreign Powers and to  
16 increase their reluctance to surrender the rights  
17 which are at the moment their only protection.

18 "In connection with the problems of maintaining  
19 law and order, the present inadequate means of com-  
20 munication in China is a serious handicap. Unless  
21 communications are sufficient to ensure prompt trans-  
22 portation of national forces, the safeguarding of law  
23 and order must largely, if not completely, be en-  
24 trusted to provincial authorities, who, on account  
25 of the distance of the Central Government, must be

1 allowed to use their own judgment in handling pro-  
2 vincial affairs. Under such conditions, independence  
3 of mind and action may easily cross the boundary of  
4 law, with the result that the province gradually  
5 takes on the aspect of a private estate. Its armed  
6 forces are also identified with their commander, not  
7 with the nation. The transfer of a commander from  
8 one army to another by order of the Central Government  
9 is, in many cases, impossible. The danger of civil  
10 war must continue to exist so long as the Central  
11 Government lacks the material means to make its au-  
12 thority swiftly and permanently felt all over the  
13 country.

14 "The problem of banditry, which may be traced  
15 throughout the history of China, and which exists  
16 to-day in all parts of the country, is subject to  
17 the same considerations. Banditry has always existed  
18 in China and the administration has never been able  
19 to suppress it thoroughly. Lack of proper communi-  
20 cations was one of the reasons which prevented the  
21 administration from getting rid of this evil, which  
22 increased or decreased according to changing circum-  
23 stances. Another contributing cause is to be found  
24 in the local uprisings and rebellions which have often  
25 occurred in China, especially as a result of malad-

ministration. Even after the successful suppression  
1 of such rebellions, bandit gangs recruited from the  
2 ranks of the rebels often remained active in parts  
3 of the country. This was specially the case in the  
4 period following the suppression of the Taiping  
5 rebellion (1850-1865). In more recent times, bandits  
6 have also originated from the ranks of unpaid soldiers  
7 who were not able to find other means of living and  
8 had been accustomed to looting during the civil wars  
9 in which they had taken part.

"Other causes which have given rise to an in-  
11 crease in banditry in parts of China were floods and  
12 droughts. These are more or less regular occurrences,  
13 and they have always brought famine and banditry in  
14 their wake. The problem has been further aggravated  
15 by the pressure of a rapidly increasing population.  
16 In congested areas, normal economic difficulties  
17 were still further increased and, amongst people  
18 living on a bare subsistence level with no margin  
19 to meet times of crisis, the slightest deterioration  
20 in the conditions of life might bring large numbers  
21 to the point of destitution. Banditry, therefore,  
22 has been largely influenced by the prevailing economic  
23 conditions. In prosperous periods or districts it has  
24 diminished, but where for any of the reasons mentioned

1           the struggle for existence was intensified or the  
2           political conditions were disturbed it was sure to  
3           increase.

4           "Once banditry had become well established  
5           in any area, its suppression by force was rendered  
6           difficult because of the defective communications  
7           in the interior of the country. It is in regions  
8           which are difficult of access, where a few miles  
9           may involve days of travel, that large armed bands  
10          can move freely, appearing and disappearing suddenly,  
11          without their abodes and movements being known. When  
12          bandit suppression has been long neglected, and when  
13          the soldiers even co-operate with bandits secretly,  
14          as has happened often enough, traffic along highways  
15          and waterways is interfered with. Such occurrences  
16          can only be stopped by adequate police forces. In  
17          the districts of the interior, bandit suppression  
18          is much more difficult, because guerilla warfare  
19          inevitably develops."

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1           THE PRESIDENT: Mr. Cole, I have a note  
2 from another colleague to which I think you must  
3 give attention.

4           "If Colonel Warren does not refute or  
5 clarify any point, it cannot serve a useful purpose,"  
6 that is, the reading of the document.

7           The note suggested the Colonel has given  
8 some difficulty to members by stating he was reading  
9 these parts simply because the prosecution omitted  
10 them. As I said before, they must be relevant and  
11 material, and my colleague is stressing that.

12          MR. COLE: Sir, we have spent a great deal  
13 more time in making the selections which we thought  
14 were important than it would take to read them  
15 always with the view in mind that the parts we did  
16 read presented a more complete picture of the things  
17 which the prosecution has read.

18          THE PRESIDENT: Well, every court gets  
19 restless under the reading of very long extracts  
20 from documents unless some good cause is assigned.  
21

22          Proceed to read.

23          MR. COLE: Thank you.

24          (Reading continued): "But, though the personal  
25 armies of local Generals and the prevalence of bandit  
hordes throughout the country may disturb the internal

1 peace of the country, they are no longer a menace to  
2 the authority of the Central Government as such.

3 There is, however, a menace of this kind from  
4 another source -- namely, Communism.

5 "The Communist movement in China, during the  
6 first years of its existence, remained restricted  
7 within intellectual and labour circles, where the  
8 doctrine gained considerable influence in the period  
9 1919-1924. Rural China was, at that time, scarcely  
10 touched by this movement. The manifesto of the  
11 Soviet Government of July 25th, 1919, declaring  
12 its willingness to renounce all privileges 'extorted'  
13 from China by the former Tsarist Government, created  
14 a favourable impression throughout China, especially  
15 amongst the intelligentsia. In May 1921, the  
16 'Chinese Communist Party' was formally constituted.  
17 Propaganda was especially conducted in labour circles  
18 at Shanghai, where red syndicates were organised. In  
19 June 1922, at its second congress, the Communist  
20 Party, which did not then number more than three  
21 hundred members, decided to ally itself with the  
22 Kuomintang. Dr. Sun Yat-sen, although opposed to  
23 the Communist doctrine, was prepared to admit indi-  
24 vidual Chinese Communists into the party. In the  
25 autumn of 1922, the Soviet Government sent a Mission

1 to China, headed by Mr. Joffe. Important interviews,  
2 which took place between him and Dr. Sun resulted  
3 in the joint declaration of January 26th, 1923, by  
4 which assurance was given of Soviet sympathy and  
5 support to the cause of the national unification and  
6 independence of China."

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1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: Your Honor, we have been  
3 reluctant to interfere, but in our submission, this  
4 part particularly of the Report is entirely irrel-  
5 evant to any issue this Tribunal has to try.

6 THE PRESIDENT: It should be sufficient to  
7 give us facts found by the Commission covering this  
8 without giving us all the reasoning.

9 MR. COLE: We take the position, sir, that  
10 it is not only the findings or the conclusions of  
11 the Lytton Commission in regard to the guilt or  
12 innocence of the Japanese, but they found it impor-  
13 tant to consider all these facts which the prose-  
14 cution has not put in at all.

15 THE PRESIDENT: The prosecution did  
16 likewise. They read long extracts containing much  
17 more than findings, reasoning.

18 MR. COLE: May I continue, sir?

19 THE PRESIDENT: Very well. There is an  
20 objection taken with which I must deal. I don't  
21 know. I had better ask my colleagues what they  
22 think.

23 MR. COLE: We take this position, sir:  
24 that whatever the Lytton Commission found important  
25 to consider should be important to the Tribunal to

1 consider. We feel it is very important from our  
2 position.

3 Nothing further, sir, except we think  
4 more than the final findings are important.

5 THE PRESIDENT: Are you attacking any  
6 findings of the Commission? You say in your  
7 opening that you want to clarify some of them,  
8 but is this one?

9 MR. COLE: It is not so much, sir, criti-  
10 cising parts of the Lytton Report as it is contending  
11 that the whole investigation was incomplete.

12 THE PRESIDENT: By a majority the objection  
13 is overruled. The evidence is admitted.

14 MR. COLE (Reading continued): "It was  
15 explicitly stated, on the other hand, that the  
16 Communist organisation and the Soviet system of  
17 government could not be introduced at that time under  
18 the conditions prevailing in China. Following this  
19 agreement, a number of military and civil advisers  
20 were sent from Moscow by the end of 1923, and  
21 'undertook, under the control of Dr. Sun, the modifi-  
22 cation of the internal organisation of the Kuomintang  
23 and of the Cantonese Army.'

24 "At the first National Congress of the Kuomintang,  
25 convened in March 1924, the admission of Chinese

1 Communists into the party was formally agreed to,  
2 on condition that such members should not take any  
3 further part in the preparation of the proletarian  
4 revolution. The period of tolerance with regard to  
5 Communism thus began.

6 "This period lasted from 1924 until 1927. Early  
7 in 1924 the Communists counted about 2,000 adherents,  
8 and red syndicates approximately 60,000 members. But  
9 the Communists soon acquired enough influence inside  
10 the Kuomintang to raise anxiety amongst the orthodox  
11 members of the party. They presented to the Central  
12 Committee, at the end of 1926, a proposal going so  
13 far as to include the nationalisation of all landed  
14 properties except those belonging to workmen, peasants  
15 or soldiers; the re-organisation of the Kuomintang;  
16 the elimination of all military leaders hostile to  
17 Communism; and the arming of 20,000 Communists and  
18 50,000 workmen and peasants. This proposal, however,  
19 was defeated, and the Communists ceased to support the  
20 intended campaign of the Kuomintang against the Northern  
21 militarists, although they had previously been most  
22 active in the organisation of the Nationalist forces.  
23 Nevertheless, at a later stage, they joined in it, and  
24 when the Northern Expedition reached Central China and  
25 established a Nationalist Government at Wu-Han in 1927,

1 the Communists succeeded in obtaining a controlling  
2 position in it, as the Nationalist leaders were not  
3 prepared to join issue with them until their own  
4 forces had occupied Nanking and Shanghai. The Wu-Han  
5 Government put into operation in the provinces of  
6 Hunan and Hupeh a series of purely communistic  
7 measures. The Nationalist Revolution was almost on  
8 the point of being transformed into a Communist Revo-  
9 lution.

10 "The Nationalist leaders at last decided that  
11 Communism had become too serious a menace to be  
12 tolerated any longer. As soon as they were firmly  
13 established at Nanking, where another National Govern-  
14 ment was constituted on April 10th, 1927, a proclama-  
15 tion was issued in which the Nanking Government ordered  
16 the immediate purification of the Army and the Civil  
17 Service from Communism. On July 15th, the majority  
18 of the Central Executive of the Kuomintang at Wu-Han,  
19 who had so far refused to join the Nationalist leaders  
20 at Nanking, adopted a resolution excluding Communists  
21 from the Kuomintang and ordering the Soviet advisers  
22 to leave China. As a result of this decision, the  
23 Kuomintang regained its unity and the Government at  
24 Nanking became generally recognized by the party.

25 "During the period of tolerance, several military

1 units had been gained to the Communist cause. These  
2 had been left in the rear, mostly in Kiangsi Province,  
3 when the Nationalist Army was marching to the North.  
4 Communist agents were sent to co-ordinate these units  
5 and to persuade them to take action against the  
6 National Government. On July 30th, 1927, the garrison  
7 at Nanchang, the capital of Kiangsi Province, together  
8 with some other military units, revolted and subjected  
9 the population to numerous excesses. However, on  
10 August 5th, they were defeated by the Government forces  
11 and withdrew to the South. On December 11th, a Com-  
12 munist rising at Canton delivered control of the city  
13 for two days into their hands. The Nanking Government  
14 considered that official Soviet agents had actively  
15 participated in these uprisings. An order of December  
16 14th, 1927, withdrew the exequatur of all the consuls  
17 of the U.S.S.R. residing in China.

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1                 "The recrudescence of civil war favoured the  
2 growth of Communist influence in the period between  
3 1928 and 1931. A Red army was organised, and extensive  
4 areas in Kiangsi and Fukien were sovietised. Only in  
5 November 1930, shortly after the defeat of a powerful  
6 coalition of Northern militarists, was the Central  
7 Government able to take up the suppression of Communism  
8 in earnest. The Communist forces had operated in parts  
9 of Kiangsi and Hunan Provinces and were then reported  
10 to have caused in two or three months the loss of 200,000  
11 lives and of property valued at about one billion dollars  
12 (silver). They had now become so strong that they were  
13 able to defeat the first and frustrate the second ex-  
14 pedition sent against them by the Government. The  
15 third expedition, directed by the Commander-in-Chief,  
16 General Chiang Kai-shek, defeated the Communist armies  
17 in several encounters. By the middle of July 1931, the  
18 most important Communist strongholds had been taken,  
19 and their forces were in full retreat towards Fukien.

20                 Whilst constituting a political commission to  
21 re-organise the areas which had been devastated, General  
22 Chiang Kai-shek pursued the Red armies, and drove them  
23 into the mountainous region north-east of Kiangsi.

24                 The Nanking Government was thus on the point  
25 of putting the principal Red army out of action, when

1 events occurred in different parts of China which obliged  
2 them to suspend this offensive and to withdraw a large  
3 part of their troops. In the North had occurred the  
4 rebellion of General Shih Yu-san, supported by a hostile  
5 intervention on the part of the Cantonese troops in the  
6 province of Hunan; simultaneously with this intervention  
7 came the events of September 18th at Mukden. Encouraged  
8 by these circumstances, the Reds resumed the offensive,  
9 and before long the fruits of the victorious campaign  
10 were almost completely lost.

11 "Large parts of the provinces of Fukien and  
12 Kiangsi, and parts of Kwangtung, are reliably reported  
13 to be completely sovietised. Communist zones of influence  
14 are far more extensive. They cover a large part of China  
15 south of the Yangtze, and parts of the provinces of Hupeh,  
16 Anhwei, and Kiangsu north of that river. Shanghai has  
17 been the centre of Communist propaganda. Individual  
18 sympathisers with Communism may probably be found in every  
19 town in China. So far, two provincial Communist govern-  
20 ments only have been organised Kiangsi and Fukien, but  
21 the number of minor Soviets runs into hundreds. The  
22 Communist government itself is formed by a committee  
23 elected by a congress of local workers and peasants. It  
24 is, in reality, controlled by representatives of the  
25 Chinese Communist Party, which sends out trained men

1 for that purpose, a large number of whom have been  
2 previously trained in the U.S.S.R. Regional Committees,  
3 under the control of the Central Committee of the Chinese  
4 Communist Party, in their turn control provincial  
5 committees and these, again, district committees, and so  
6 on, down to the Communist cells organised in factories,  
7 schools, military barracks, etc.

8 "When a district has been occupied by a Red  
9 army, efforts are made to sovietise it, if the occupation  
10 appears to be of a more or less permanent nature. Any  
11 opposition from the population is suppressed by terrorism.  
12 A communist government, as described above, is then  
13 established. The complete organisation of such governments  
14 comprises: Commissariats for Internal Affairs, for the  
15 struggle against the anti-revolutionaries (G. P. U.),  
16 for Financial Affairs, for Rural Economy, for Education,  
17 for Hygiene, for Post and Telegraph, for Communications;  
18 and Committees for Military Affairs and for the control  
19 of workmen and peasants. Such elaborate government  
20 organisations exist only in completely sovietised districts.

21 "Elsewhere the organisation is much more modest.

22 "The programme of action consists in the  
23 cancellation of debts, the distribution amongst landless  
24 proletarians and small farmers of land forcibly seized,  
25 either from large private owners or from religious

institutions, such as temples, monasteries and churches.  
1 Taxation is simplified; the peasants have to contribute  
2 a certain part of the produce of their lands. With a  
3 view to the improvement of agriculture, steps are taken  
4 to develop irrigation, rural credit systems, and co-  
5 operatives. Public schools, hospitals and dispensaries  
6 may also be established.  
7

"Thus the poorest farmers derive considerable  
8 benefit from Communism, whereas the rich and middle-  
9 class landowners, merchants and local gentry are completely  
10 ruined, either by immediate expropriation or by levies  
11 and fines, and, in applying its agrarian programme, the  
12 Communist Party expects to gain the support of the masses.  
13 In this respect, its propaganda and action have met with  
14 considerable success, notwithstanding the fact that  
15 Communist theory conflicts with the Chinese social system.  
16 Existing grievances resulting from oppressive taxation,  
17 extortion, usury and pillage by soldiery or bandits were  
18 fully exploited. Special slogans were employed for  
19 farmers, workmen, soldiers and intellectuals, with  
20 variations specially adapted to women.

22 "Communism in China not only means, as in most  
23 countries other than the U.S.S.R., either a political  
24 doctrine held by certain members of existing parties,  
25 or the organisation of a special party to compete for

power with other political parties. It has become an  
1 actual rival of the National Government. It possesses  
2 its own law, army and government, and its own territorial  
3 sphere of action. For this state of affairs there is no  
4 parallel in any other country. Moreover, in China, the  
5 disturbance created by the Communist war is made more  
6 serious by the fact that the country is going through a  
7 critical period of internal reconstruction, still further  
8 complicated during the last eleven months by an external  
9 crisis of exceptional gravity. The National Government  
10 seems to be determined to regain the control of the districts  
11 under Communist influence, and to pursue in those districts,  
12 once their recovery is achieved, a policy of economic  
13 rehabilitation; but in its military campaigns, apart from  
14 difficulties already mentioned, both internal and external,  
15 it is hampered by lack of funds and defective communications.  
16 The problem of Communism in China is thus linked up with  
17 the larger problem of national reconstruction.

19 "In the summer of 1932, important military  
20 operations, having for their object a final suppression  
21 of the Red resistance, were announced by the Government  
22 of Nanking. They were commenced and, as stated above,  
23 were to have been accompanied by a thorough social and  
24 administrative reorganisation of the recaptured regions,  
25 but up to the present no important results have been

announced.

1            "So far as Japan is China's nearest neighbour  
2 and largest customer, she has suffered more than any  
3 other Power from the lawless conditions described in this  
4 chapter. Over two-thirds of the foreign residents in  
5 China are Japanese, and the number of Koreans in Manchuria  
6 is estimated at about 800,000. She has more nationals,  
7 therefore, than any other Power, who would suffer if they  
8 were made amenable to Chinese law, justice and taxation  
9 under present conditions.  
10

11            "Japan felt it impossible to satisfy Chinese  
12 aspirations so long as satisfactory safeguards to take  
13 the place of her Treaty rights could not be hoped for.  
14 Her interests in China, and more especially in Manchuria,  
15 began to be more prominently asserted as those of the  
16 other major Powers receded into the background. Japan's  
17 anxiety to safeguard the life and property of her subjects  
18 in China caused her to intervene repeatedly in times of  
19 civil war or of local disturbances. Such action was  
20 bitterly resented by China, especially when it resulted  
21 in an armed clash such as occurred in 1928 at Tsinan.  
22 In recent years, the claims of Japan have come to be  
23 regarded in China as constituting a more serious challenge  
24 to national aspirations than the rights of all the other  
25 Powers taken together.

"This issue, however, though affecting Japan to  
1 a greater extent than other Powers, is not a Sino-  
2 Japanese issue alone. China demands immediately the  
3 surrender of certain exceptional powers and privileges  
4 because they are felt to be derogatory to her national  
5 dignity and sovereignty. The foreign Powers have hesitated  
6 to meet these wishes as long as conditions in China did  
7 not ensure adequate protection of their nationals, whose  
8 interests depend on the security afforded by the enjoyment  
9 of special Treaty rights. The process of fermentation,  
10 inevitable in a period of transition, which this chapter  
11 has attempted to describe, has developed forces of public  
12 opinion which will probably continue to embarrass the  
13 Central Government in the conduct of its foreign policy,  
14 as long as it is weakened by failure to complete the  
15 unification and reconstruction of the country. The  
16 realisation of China's national aspirations in the field  
17 of foreign relations depends on her ability to discharge  
18 the functions of a modern Government in the sphere of  
19 domestic affairs, and until the discrepancy between these  
20 two has been removed the danger of international friction  
21 and of incidents, boycotts, and armed interventions will  
22 continue.

"The present extreme case of international friction  
24 having forced China once more to seek the intervention  
25

1 of the League of Nations should, if a satisfactory settle-  
2 ment can be effected, convince her of the advantages of  
3 the policy of international co-operation, which was  
4 inaugurated at Washington with such beneficial results  
5 in 1922. China has not at the moment the capital nor the  
6 trained specialists necessary for the unaided accomplish-  
7 ment of her national reconstruction. Dr. Sun Yat-sen  
8 himself realised this, and actually drew up an ambitious  
9 plan of international participation in the economic  
10 development of his country. The National Government,  
11 too, has in recent years sought and accepted international  
12 help in the solution of her problems -- in financial matter  
13 since 1930, in matters relating to economic planning and  
14 development in liaison with the technical organisations  
15 of the League of Nations since the constitution of the  
16 National Economic Council in 1931, and in relief of the  
17 distress caused by the great flood of the same year.  
18 Along this road of international co-operation, China would  
19 make the surest and most rapid progress towards the  
20 attainment of her national ideals, and such a policy  
21 would make it easier for foreign Powers to give what  
22 support the Central Government may seek, and to help  
23 in the removal as rapidly and as effectively as possible  
24 of any causes of friction which may endanger her peace-  
25 ful relations with the rest of the world."

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Mr. Warren will continue, if the President

please.

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1 THE PRESIDENT: Colonel Warren.

2 MR. "ARREN: We will continue with our  
3 reading from the Lytton Report. I would like to refer  
4 the Tribunal to page 25, the last paragraph thereon,  
5 commencing in the middle of the paragraph with the  
6 words "on the northwest," and will end with the words  
7 "expected to become of great importance."

8 "On the north-west, north-east, and east,  
9 Manchuria is bounded by the Siberian provinces of the  
10 U.S.S.R., on the south-east by Korea, and on the south  
11 by the Yellow Sea. The southern end of the Liaotung  
12 Peninsula has been held by Japan since 1905. Its area  
13 is over 1,300 square miles, and it is administered as  
14 as Japanese leased territory. In addition, Japan  
15 exercises certain rights over a narrow strip of land,  
16 which extends beyond the Leased Territory, and which  
17 contains the lines of the South Manchuria Railway.  
18 The total area is only 108 square miles, whereas the  
19 length of the lines is 690 miles.

20 "The soil of Manchuria is generally fertile,  
21 but its development is dependent on transportation  
22 facilities. Many important towns flourish along its  
23 rivers and railways. Formerly, development was  
24 practically dependent on the river system, which is  
25 still of much importance, though the railways have now

1 taken the first place as a means of transport. The  
2 production of important crops, such as soya beans,  
3 kaoliang, wheat, millet, barley, rice, oats, has doubled  
4 in fifteen years. In 1929, these crops were estimated  
5 at over 876,000,000 bushels. According to estimates  
6 given in the Manchurian Year-Book, 1931, only 12.6  
7 per cent of the total area has been brought under  
8 cultivation in 1929, whereas 28.4 per cent was cultivable.

9 A large increase of production may therefore be expected  
10 in the future if economic conditions improve. The total  
11 value of the agricultural products of Manchuria for  
12 the year 1928 was estimated at over £130,000,000  
13 sterling. A large part of the agricultural produce  
14 is exported. Pongee or tussah silk is another impor-  
15 tant article of export from Manchuria.

16 "The mountainous regions are rich in timber  
17 and minerals, especially coal. Important deposits of  
18 iron and gold are also known to exist, while large  
19 quantities of oil shale, dolomite, magnesite, lime-  
20 stone, fireclay, steatite, and silica of excellent  
21 quality have been found. The mining industry may  
22 therefore be expected to become of great importance."

23 Then, your Honor, beginning with the last  
24 paragraph on page 26 we will read the following two  
25 paragraphs, ending with "estimated at 18 million."

1           "After the conquest, the Manchus quartered  
2           their garrisons in the more important cities of China,  
3           forbade Manchus to engage in certain professions,  
4           prohibited intermarriage between Manchus and Chinese,  
5           and restricted the immigration of Chinese into  
6           Manchuria and Mongolia. These measures were inspired  
7           more by political than by racial discrimination, and  
8           aimed at safeguarding the permanent dominance of the  
9           dynasty. They did not affect the numerous Chinese  
10          Bannermen, who enjoyed practically the same privileged  
11          status as the Manchus themselves.

12         "The exodus of the Manchus and their Chinese  
13          allies greatly reduced the population of Manchuria.  
14          However, in the South, Chinese communities continued  
15          to exist. From this foothold a few settlers spread  
16          across the central part of Fengtien province. Their  
17          number was increased by a continuous infiltration of  
18          immigrants from China, who succeeded in evading the  
19          exclusion laws or who had profited by their modifica-  
20          tions from time to time. Manchus and Chinese became  
21          still more amalgamated, and even the Manchu language  
22          was virtually replaced by Chinese. The Mongols,  
23          however, were not assimilated but pushed back by the  
24          advancing immigrants. Finally, to stem the Russian  
25          advance from the North, the Manchu Government decided

1 to encourage Chinese immigration. In 1878, various  
2 parts of Manchuria were accordingly opened and various  
3 forms of encouragement given to immigrants, with the  
4 result that, at the time of the Chinese Revolution  
5 in 1911, the population of Manchuria was estimated at  
6 18,000,000."

7 THE PRESIDENT: Most of that seems to me to  
8 be very remote. After all you lead up to the population  
9 and that is about the only important statement. I am  
10 sure the Nuernberg Court wasn't asked to investigate  
11 the history of Germany in this way.

12 MR. WARREN: Your Honor, I should like to  
13 point out perhaps in justification for having read that  
14 that the prosecution has selected two excerpts from  
15 the following paragraph and then they read several  
16 pages, I think, after that and this is in explanation  
17 of what they had read.

18 THE PRESIDENT: No matter what the prosecu-  
19 tion did, as I have said twice already you are con-  
20 fined to what is relevant and material. Have you  
21 many of these excerpts to read from the report?

22 MR. WARREN: Well, quite a number. We do have.  
23 In this particular one I should like to call the atten-  
24 tion of the Tribunal that we feel that this shows the  
25 desire of the Manchurian people for independence has

1       been a matter of centuries standing and not anything  
2       created by the Japanese in the last few years. We  
3       thought it was relevant from that point.

4             THE PRESIDENT: The question isn't what was  
5       the desire of the Manchurians for independence, but,  
6       if there was such a desire, what use the Japanese  
7       put it to in their own interests. All peoples want  
8       to be independent if they can. We assume that. We  
9       don't want it proved in the case of the Manchurians.

10          I hope the defense are having frequent con-  
11       sultations about this evidence because they may desire  
12       or may decided to cut down some of it.

13          MR. WARREN: Well, your Honor, we do hold  
14       consultations every day and every night and I will  
15       hold one at noon again and see if we can cut this  
16       somewhat. Of course, our contention is that the move-  
17       ment was spontaneous in Manchuria. However, may I  
18       continue, sir?

19          THE PRESIDENT: Proceed to read.

20          MR. WARREN: Thank you, sir. The first  
21       part of the following paragraph was read by the  
22       prosecution. We will read commencing in the eighth  
23       line with the words "In China". That is still on page  
24       27, your Honor.

25             "In China, officials were not allowed to hold

1 office in their native province. Each Manchurian  
2 province had a military governor, who exercised  
3 complete power in civil as well as military matters.  
4 Later, attempts had been made to separate military and  
5 civil administration. The results were not satisfactory.  
6 The demarcation of the respective spheres of authority  
7 was not adequate; misunderstandings and intrigues were  
8 frequent and inefficiency resulted."

9 The next sentence was read by the prosecu-  
10 tion, and we shall begin with the following sentence,  
11 commencing with the words "provincial civil" and read  
12 the following three sentences ending with the words  
13 "affairs after 1907."

14 "Provincial civil governors under the control  
15 of the Viceroy were in charge of provincial adminis-  
16 tration. This reorganisation prepared the way for  
17 the later administrative reforms which introduced the  
18 Chinese system of provincial government. These last  
19 measures of the Manchus were very effective, thanks  
20 to the able administrators in charge of Manchurian  
21 affairs after 1907."

22 The prosecution read the balance of page 27,  
23 all of page 28 and page 29 to the last paragraph. We  
24 will begin reading the last paragraph on page 29,  
25 commencing with the words "after the death of Marshal

1 Chang Tso-lin;" and continue reading the balance of the  
2 chapter which ends on page 37.

3 Now, your Honor, I might state this: We feel  
4 that this is of vital importance. However, it is five  
5 minutes until twelve now and it may be that we can  
6 either cut this down, paraphrase it, or otherwise.  
7 We will attempt to do that if the Tribunal bears with  
8 us on that point.

9 THE PRESIDENT: We will adjourn until half  
10 past one.

11 (Whereupon, at 1200, a recess was  
12 taken.)

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## 1                   AFTERNOON SESSION

2  
3                   The Tribunal met, pursuant to recess, at 1330,  
4                   Hon. Ju-Ao Mei, Member from the Republic of China, not  
5                   sitting.

6                   MARSHAL OF THE COURT: The International Mili-  
7                   tary Tribunal for the Far East is now resumed.

8                   &                   MR. WARREN: If the Tribunal please, during  
9                   the lunch hour counsel has conferred with reference to  
10                  cutting down the number of our extracts, and we have  
11                  succeeded in cutting them down to a point probably  
12                  four/fifths of what we originally intended to read.

13                  We thought they were material; however, since  
14                  this morning's session, of course -- I mean during this  
15                  morning's session we found more of what we thought the  
16                  Tribunal needed to assist it, so we were thereby en-  
17                  abled to cut it. However, there is a mechanical diffi-  
18                  culty which will arise in that our running comment  
19                  which we furnished to the interpreters, of course,  
20                  will be of no value.

21                  THE PRESIDENT: Proceed with your reading.  
22                  Only under the greatest provocation will we interfere.

23                  &                   MR. WARREN: Your Honor, I think that I can  
24                  make a suggestion and save considerable time, and that  
25                  is what I was about to do.

1        "We have furnished the interpreters with a  
2        marked copy which will come in chronological order  
3        as we read, and unless the Tribunal wants my running  
4        comment as to the location of the new excerpts which  
5        we will read interpreted, it isn't at all necessary,  
6        because it would be meaningless if they were inter-  
7        preted.

8                    THE PRESIDENT: Proceed to read.

9                    MR. WARREN: Thank you.

10          Beginning at page 29, at the last paragraph,  
11          we do desire to read the balance of that paragraph  
12          -- I mean the balance of that section, and the rest  
13          will be chopped. (Reading:)

14          "After the death of Marshal Chang Tso-lin,  
15          his son, Chang Hsueh-liang, became the ruler of  
16          Manchuria. He shared many of the national aspirations  
17          of the younger generation, and desired to stop civil  
18          warfare and assist the Kuomintang in its policy of  
19          unification. As Japan had already some experience  
20          of the policy and tendencies of the Kuomintang, she did  
21          not welcome the prospect of such influences penetrat-  
22          ing into Manchuria. The young Marshal was advised  
23          accordingly. Like his father, he resented that advice  
24          and decided to follow his own counsel. His relations  
25          with the Kuomintang and with Nanking became closer

1 and, in December 1928, he accepted the national flag  
2 and declared his allegiance to the Central Govern-  
3 ment. He was made Commander-in-Chief of the North-  
4 Eastern Frontier Army and was also confirmed as  
5 chief of the administration of Manchuria, with the  
6 addition of Jehol, a part of Inner Mongolia with  
7 an area of about 60,000 square miles.

8 "The union of Manchuria with Nationalist  
9 China necessitated some changes in the administrative  
10 organisation, which was made to approximate to  
11 that of the Central Government. The committee system  
12 was introduced and Kuomintang headquarters were  
13 established. In reality, the old system and its per-  
14 sonnel continued to function as before. The inter-  
15 ference of party branches with the local administra-  
16 tions, such as continually occurred in China, was  
17 not tolerated in Manchuria. The provision which  
18 required all important military officers and civil  
19 officials to be members of the Kuomintang was treated  
20 as a mere formality. The relationship with the  
21 Central Government depended, in all affairs --  
22 military, civil, financial and foreign -- on  
23 voluntary co-operation. Orders or instructions  
24 requiring unquestioning obedience would not have  
25 been tolerated. Appointments or dismissals against

the wishes of the Manchurian authorities were  
1 unthinkable. In various other parts of China, a  
2 similar independence of action in government and  
3 party affairs existed. All important appointments  
4 are, in such cases, really made by the local  
5 authorities and only confirmed by the Central  
6 Government.

"In the domain of foreign policy, the union  
8 of Manchuria with the Nationalist Government was to  
9 have more important consequences, although, in this  
10 respect, the local authorities were also left much  
11 liberty of action. The persistent assaults of  
12 Marshal Chang Tso-lin on the position of the Chinese  
13 Eastern Railway in Manchuria and his disregard of  
14 certain rights claimed by Japan show that, in Man-  
15 churia, a 'forward policy' had already been adopted  
16 before the union with the Nationalists. However,  
17 after the union, Manchuria was opened to well-  
18 organised and systematic Kuomintang propaganda. In  
19 its official party publications and numerous  
20 affiliated organs, it never ceased to insist on the  
21 primary importance of the recovery of lost sovereign  
22 rights, the abolition of unequal treaties, and the  
23 wickedness of imperialism. Such propaganda was  
24 bound to make a profound impression in Manchuria,

where the reality of foreign interests, courts,  
1 policy, guards or soldiers on Chinese soil, was  
2 apparent. Through the Nationalist school-books,  
3 party propaganda entered the schools. Associations  
4 such as the Liaoning Peoples' Foreign Policy  
5 Association made their appearance. They stimulated  
6 and intensified the nationalist sentiment and  
7 carried on an anti-Japanese agitation. Pressure was  
8 brought to bear on Chinese house-owners and land-  
9 lords to raise the rents of Japanese and Korean  
10 tenants, or to refuse renewal of rent contracts.  
11 The Japanese reported to the Commission many cases  
12 of this nature. Korean settlers were subjected to  
13 systematic persecution. Various orders and instruc-  
14 tions of an anti-Japanese nature were issued. Cases  
15 of friction accumulated and dangerous tension  
16 developed. The Kuomintang Party headquarters in the  
17 provincial capitals were established in March 1931,  
18 and subsequently branch organisations were set up  
19 in the other towns and districts. Party propagandists  
20 from China came North in increasing numbers. The  
21 Japanese complained that the anti-Japanese agitation  
22 was intensified every day. In April 1931, a five-  
23 days' conference under the auspices of the People's  
24 Foreign Policy Association was held at Mukden, with

over three hundred delegates from various parts of  
1 Manchuria in attendance. The possibility of liquidat-  
2 ing the Japanese position in Manchuria was dis-  
3 cussed, the recovery of the South Manchuria Railway  
4 being included in the resolutions adopted. At the  
5 same time, the U.S.S.R. and her citizens suffered  
6 from similar tendencies, while the White Russians,  
7 although they had no sovereign rights or exceptional  
8 privileges to surrender, were subjected to  
9 humiliation and ill-treatment.

10 "As regards domestic affairs, the Manchurian  
11 authorities had retained all the power they wanted,  
12 and they had no objection to following administrative  
13 rules and methods adopted by the Central Government  
14 so long as the essentials of power were not affected.  
15

16 "Soon after the union, the Political Com-  
17 mittee of the North-Eastern Provinces was established  
18 at Mukden. It was, under the nominal supervision  
19 of the Central Government, the highest administrative  
20 authority in the North-Eastern Provinces. It con-  
21 sisted of thirteen members, who elected the direction  
22 and supervision of the work of the Governments of  
23 the four provinces of Liaoning, Kirin, Heilungkiang  
24 and Jehol, and of the so-called Special District  
25 which, since 1922, had replaced the administrative

sphere of the Chinese Eastern Railway. The Committee had authority to deal with all matters not specifically reserved to the Central Government and to take any action which did not conflict with their laws and orders. It was the duty of the Governments of the Provinces and of the Special District to carry out the decisions reached by the Committee.

"The administrative system of the Provinces did not differ essentially from the organisation adopted in the rest of China. The concession made with regard to the preservation of Manchuria as an administrative unit was the most important difference. Without this concession, voluntary union would probably not have taken place. In fact, notwithstanding external changes, the old conditions continued to exist. The Manchurian authorities realised that, as before, their power derived much more from their armies than from Nanking.

"This fact explains the maintenance of large standing armies numbering about 250,000 men, and of the huge arsenal on which more than \$200,000,000 (silver) are reported to have been spent. Military expenses are estimated to have amounted to 80 per cent of the total expenditure. The remainder was

1 not sufficient to provide for the costs of adminis-  
2 tration, police, justice and education. The  
3 treasury was not capable of paying adequate  
4 salaries to the officials. As all power rested in  
5 the hands of a few military men; office could be  
6 owned only through them. Nepotism, corruption, and  
7 maladministration continued to be unavoidable con-  
8 sequences of this state of affairs. The Commission  
9 found grave complaints concerning this maladministra-  
10 tion to be widely current. This state of affairs,  
11 however, was not peculiar to Manchuria, as similar  
12 or even worse conditions existed in other parts  
13 of China.

14 "Heavy taxation was needed for the upkeep  
15 of the army. As ordinary revenues were still in-  
16 sufficient, the authorities further taxed the people  
17 by steadily depreciating the irredeemable provincial  
18 currencies. This was often done, particularly of-  
19 late, in connection with 'official bean-buying'  
20 operations, which by 1930 had already assumed  
21 monopolistic proportions. By gaining control over  
22 Manchuria's staple products, the authorities had  
23 hoped to enhance their gains by compelling the  
24 foreign bean-buyers, particularly the Japanese, to  
25 pay higher prices. Such transactions show the

1 extent to which the authorities controlled banks  
2 and commerce. Officials likewise engaged freely  
3 in all sorts of private enterprise, and used their  
4 power to gather wealth for themselves and their  
favourites.

5       ""whatever the shortcomings of the adminis-  
6 tration in Manchuria may have been in the period  
7 preceding the events of September 1931, efforts  
8 were made in some parts of the country to improve  
9 the administration, and certain achievements must  
10 be noted, particularly in the field of education,  
11 progress, of municipal administration, and of public  
12 utility work. It is necessary, in particular, to  
13 emphasise that, during this period, under the  
14 administration of Marshal Cheng Tso-lin and Marshal  
15 Chang Hsueh-liang, the Chinese population and  
16 Chinese interests played a much greater part than  
17 formerly in the development and organisation of the  
18 economic resources of Manchuria.

19       "The extensive settlement of Chinese immi-  
20 grants, already mentioned, helped to develop the  
21 economic and social relations between Manchuria and  
22 the rest of China. But apart from this colonisation,  
23 it was during this period that Chinese railways,  
24 independent of Japanese capital, notably the Mukden-

1 Hailung, the Tahushan-Tungliao (a branch of the  
2 Peiping-Mukden system), the Tsitsihar-Koshan, and  
3 the Hulun-Hailun railways, were built, and that the  
4 Hulutao Harbour project, the Liao River Conservancy  
5 work, and some navigation enterprises on various  
6 rivers were started. Official and private Chinese  
7 interests participated in many enterprises. In  
8 mining, they had an interest in the Penhsihu, Muling,  
9 Chalainoerh and Laotoukou coal-mines, and sole  
10 responsibility for the development of other mines,  
11 many of them under the direction of the official  
12 North-Eastern Mining Administration; they were also  
13 interested in gold-mining in Heilungkiang province.  
14 In forestry, they had a joint interest with Japanese  
15 in the Yalu Timber Company and were engaged in the  
16 timber industry in Heilungkiang and Kirin Provinces.  
17 Agricultural experimental stations were started in  
18 various places in Manchuria, and agricultural associa-  
19 tions and irrigation projects were encouraged.  
20 Finally, Chinese interests were engaged in milling  
21 and textile industries, bean, oil and flour mills  
22 in Harbin, spinning and weaving mills for Pongee  
23 or Tussah silk, cotton and wool.

24 "Commerce between Manchuria and the rest of  
25 China also increased. This trade was partly financed

1 by Chinese banks, notably the Bank of China, which  
2 had established branches in the leading towns in  
3 Manchuria. Chinese steamships and native junks  
4 plied between China Proper and Dairen, Yingkow (New-  
5 chwang) and Antung. They carried increasing amounts  
6 of cargo and occupied second place in Manchuria's  
7 shipping, being exceeded only by Japanese tonnage.  
8 Chinese insurance business was also on the increase,  
9 and the Chinese Maritime Customs derived an ever-  
10 increasing revenue from the trade of Manchuria.

11 "Thus, during the period preceding the  
12 conflict between China and Japan, both the political  
13 and economic ties between Manchuria and the rest of  
14 China were gradually strengthened. This growing  
15 interdependence contributed to induce Chinese leaders,  
16 both in Manchuria and in Nanking, to pursue an  
17 increasingly nationalist policy directed against the  
18 interests and rights acquired by Russia or Japan.

19 "The Sino-Japanese war of 1894-95 had given  
20 Russia an opportunity to intervene, ostensibly on  
21 behalf of China, but in fact in her own interest,  
22 as subsequent events proved. Japan was forced by  
23 diplomatic pressure to return to China the Liaotung  
24 Peninsula in South Manchuria, which had been ceded  
25 to Japan by the Treaty of Shimonoseki in 1895, and

1 Russia assisted China to pay off the war indemnities  
2 which had been imposed by Japan. In 1896, a  
3 secret defensive alliance was concluded between  
4 the two countries and, in the same year, in con-  
5 sideration of the services above referred to, Russia  
6 was authorised by China to carry a branch of the  
7 Trans-Siberian Railway across Manchuria in a direct  
8 line from Chita to Vladivostok. This line was said  
9 to be needed for the transportation of Russian  
10 forces to be sent to the East in case Japan should  
11 again attack China. The Russo-Chinese Bank (later  
12 the Russo-Asiatic Bank) was established to mask  
13 somewhat the official character of the enterprise."

14 And then we skip seven lines, starting at  
15 the end with the word "during."

16 "During the period of the contract, the  
17 company was to have the absolute and exclusive  
18 right of administration of its lands. This clause  
19 was interpreted by Russia in a much broader way than  
20 various other stipulations in the contract seem to  
21 warrant. China protested against the continuous  
22 Russian attempts to enlarge the scope of the con-  
23 tract, but was not able to prevent it."

24  
25

1           Then skipping to the next paragraph, the  
2 first four lines:

3           "In 1898, Russia secured a lease for twenty-  
4 five years of the southern part of the Liaotung Penin-  
5 sula, which Japan had been forced to give up in 1895,  
6 and also secured the right to connect the Chinese  
7 Eastern Railway at Harbin with Port Arthur and Dalny  
8 (now Dairen) in the leased territory. Authority was  
9 given for the construction of a naval port at Port  
10 Arthur."

11          Then skipping the balance of that paragraph  
12 and commencing with the next paragraph, "In 1900,"  
13 reading the entire paragraph which is short:

14          "In 1900, Russia occupied Manchuria on the  
15 ground that the Boxer rising had endangered her nation-  
16 als. Other Powers protested and demanded the withdraw-  
17 al of her forces, but Russia delayed taking action in  
18 this sense. In February 1901, the draft of a secret  
19 Sino-Russian treaty was discussed in St. Petersburg,  
20 by the terms of which China, in return for the resto-  
21 ration of her civil authority in Manchuria, was to  
22 sanction the maintenance of the railway guards which  
23 Russia had established under Clause 6 of the Funda-  
24 mental Contract of 1896, and to engage not to transfer  
25 to other nations or their subjects, without the consent

1       of Russia, mines or other interests in Manchuria,  
2       Mongolia, and Sinkiang. These and some other clauses  
3       in the draft treaty, when they became known, aroused  
4       opposition from public opinion in China and other  
5       countries and, on April 3rd, 1901, the Russian  
6       Government issued a circular note to the effect that  
7       the project had been withdrawn."

8              Then on page 34, starting about the middle  
9        of the third line:

10          "In Korea, Russian pressure increased also.  
11        In July 1902, Russian troops appeared at the mouth of  
12        the Yalu River. Several other acts convinced Japan  
13        that Russia had decided upon a policy which was a men-  
14        ace to her interests, if not to her very existence."

15          And then skipping to page 36, about the  
16        middle of the page, the fourth paragraph down -- a  
17        short paragraph:

18          MR. TAVENNER: If your Honor please, as far  
19        as the prosecution is concerned, we would be willing  
20        in connection with this document that counsel call to  
21        the Tribunal's attention the sections in which they  
22        are interested and point those matters out rather than  
23        read these lengthy excerpts. The document is already  
24        in evidence. I merely suggest that in the interest  
25        of saving time.

1           THE PRESIDENT: If it is worth reading, this  
2 is a convenient way to have it before us.

3           MR. WARREN: Then skipping to page 36, the  
4 paragraph I previously indicated, in the middle of the  
5 page:

6           "It is an interesting fact that the war be-  
7 tween Russia and Japan was followed almost immediately  
8 by a policy of close cooperation, and when peace was  
9 concluded they were able to strike a satisfactory  
10 balance between their respective spheres of interest  
11 in North and South Manchuria. Such traces of the con-  
12 flict as might have remained behind were rapidly ef-  
13 faced by controversies with other Powers which wanted  
14 to engage actively in the development of Manchuria.  
15 The fear of other rivals hastened the process which  
16 was reconciling the two countries. The Treaties of  
17 1907, 1910, 1912 and 1916 brought the two countries  
18 progressively closer together."

19           Now, the next paragraph, about seven lines  
20 down, in the middle of the page, starting with the  
21 words "Moreover."

22           "Moreover, the Allied intervention (1918-  
23 1920), with its aftermath of friction between the  
24 Japanese and Soviet forces in Siberia (1920-1922),  
25 had accentuated the change in the relations between

1 Japan and Russia. The attitude of the Soviet Government gave a strong impetus to China's nationalistic aspirations. As the Soviet Government and the Third International had adopted a policy opposed to all imperialist Powers which maintained relations with China on the basis of the existing treaties, it seemed probable that they would support China in the struggle for the recovery of sovereign rights. This development revived all the old anxieties and suspicions of Japan towards her Russian neighbour. This country, with which she had once been at war, had, during the years which followed that war, become a friend and ally. Now this relationship was changed, and the possibility of a danger from across the North-Manchurian border again became a matter of concern to Japan.  
2 The likelihood of an alliance between the Communist doctrines in the North and the anti-Japanese propaganda of the Kuomintang in the South made the desire to impose between the two a Manchuria which should be free from both increasingly felt in Japan. Japanese misgivings have been still further increased in the last few years by the predominant influence acquired by the U.S.S.R. in Outer Mongolia and the growth of Communism in China."

1           Then skipping to page 39, starting with the  
2 second paragraph and reading through to the last para-  
3 graph. This is under "Conflict Between Fundamental  
4 Interests of Japan and China in Manchuria":

5           "Japanese interests in Manchuria differ both  
6 in character and degree from those of any other  
7 foreign country. Deep in the mind of every Japanese  
8 is the memory of their country's great struggle with  
9 Russia in 1904-05, fought on the plains of Manchuria,  
10 at Mukden and Liaoyang, along the line of the South  
11 Manchuria Railway, at the Yalu River, and in the Liao-  
12 tung Peninsula. To the Japanese the war with Russia  
13 will ever be remembered as a life-and-death struggle  
14 fought in self-defense against the menace of Russian  
15 encroachments. The facts that a hundred thousand  
16 Japanese soldiers died in this war and that two billion  
17 gold yen were expended have created in Japanese minds a  
18 determination that these sacrifices shall not have been  
19 made in vain.

20           "Japanese interest in Manchuria, however, be-  
21 gan ten years before that war. The war with China, in  
22 1894-95, principally over Korea, was largely fought at  
23 Port Arthur and on the plains of Manchuria; and the  
24 Treaty of Peace signed at Shimonoseki ceded to Japan  
25 in full sovereignty the Liaotung Peninsula. To the

1 Japanese, the fact that Russia, France and Germany  
2 forced them to renounce this cession does not affect  
3 their conviction that Japan obtained this part of  
4 Manchuria as the result of a successful war and  
5 thereby acquired a moral right to it which still  
6 exists.

7 "Manchuria has been frequently referred to as  
8 the 'life-line' of Japan. Manchuria adjoins Korea,  
9 now Japanese territory. The vision of a China, uni-  
10 fied, strong and hostile, a nation of four hundred  
11 millions, dominant in Manchuria and in Eastern Asia,  
12 is disturbing to many Japanese. But to the greater  
13 number, when they speak of menace to their national  
14 existence and of the necessity for self-defense, they  
15 have in mind Russia rather than China. Fundamental,  
16 therefore, among the interests of Japan in Manchuria  
17 is the strategic importance of this territory.  
18

19 "There are those in Japan who think that she  
20 should entrench herself firmly in Manchuria against  
21 the possibility of attack from the U.S.S.R. They have  
22 an ever-present anxiety lest Korean malcontents in  
23 league with Russian Communists in the nearby Maritime  
24 Province might in future invite, or cooperate with,  
25 some new military advance from the North. They regard  
Manchuria as a buffer region against both the U.S.S.R.

1 and the rest of China. Especially in the minds of  
2 Japanese military men, the right claimed, under agree-  
3 ments with Russia and China, to station a few thousand  
4 railway guards along the South Manchuria Railway is  
5 small recompense for the enormous sacrifices of their  
6 country in the Russo-Japanese War, and a meagre se-  
7 curity against the possibility of attack from that  
8 direction.

9 "Patriotic sentiment, the paramount need for  
10 military defense, and the exceptional treaty rights all  
11 combine to create the claim to a 'special position' in  
12 Manchuria. The Japanese conception of this 'special  
13 position' is not limited to what is legally defined in  
14 treaties and agreements either with China or with other  
15 States. Feelings and historical association, which  
16 are the heritage of the Russo-Japanese War, and pride  
17 in the achievements of Japanese enterprise in Manchuria  
18 for the last quarter-century, are an indefinable but  
19 real part of the Japanese claim to a 'special position.'  
20 It is only natural, therefore, that the Japanese use of  
21 this expression in diplomatic language should be ob-  
22 scure, and that other States should have found it diffi-  
23 cult, if not impossible, to recognise it by internation-  
24 al instruments."

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Then I skip to page 41, the two paragraphs  
in the middle of the page, commencing with:

"The Japanese Government has generally pur-  
sued a firmer policy in Manchuria than elsewhere in  
China, in order to preserve and develop those vested  
interests which are peculiar to that region. Certain  
of the Cabinets have tended to place great reliance  
on the use of interventionist methods, accompanied  
by a threat of force. This was true especially at  
the time of the presentation of the 'Twenty-one  
Demands' on China in 1915, but as to the wisdom of the  
'Twenty-one Demands,' as well as to other methods of  
intervention and force, there has always been a marked  
difference of opinion in Japan.

"The Washington Conference, although it had  
a marked effect upon the situation in the rest of  
China, made little actual change in Manchuria. The  
Nine-Power Treaty of February 6th, 1922, in spite of  
its provisions with respect to the integrity of China  
and the policy of the 'Open Door,' has had but quali-  
fied application to Manchuria in view of the character  
and extent of Japan's vested interests there, although  
textually the Treaty is applicable to that region.  
The Nine-Power Treaty did not materially diminish the  
claims based on these vested interests, although, as

already stated, Japan formally relinquished her special  
rights regarding loans and advisers which had been  
granted in the Treaty of 1915."

I wonder if I might have Mr. Cole spell me;  
my throat is wearing out, sir.

THE PRESIDENT: Yes.

MR. COLE: Going to page 49, subdivision IV:  
"The Sino-Japanese Treaty and Notes of 1915  
and Related Issues.

"With the exception of their railway controversies, the Sino-Japanese issues of greatest importance which were outstanding in September 1931 were those which arose from the Sino-Japanese Treaties and Notes of 1915, which in turn were a result of the so-called 'Twenty-one Demands.' These issues mainly concerned South Manchuria and Eastern Inner Mongolia, since, with the exception of the question of the Han-yeiping Mine (near Hankow), the other agreements negotiated in 1915 had either been replaced by new ones or had been voluntarily given up by Japan. The controversies in Manchuria were over the following provisions:

"(1) The extension of the term of Japanese possession of the Kwantung Leased Territory to

ninety-nine years (1997);

"The prolongation of the period of Japanese possession of the South Manchuria Railway and the Antung-Mukden Railway to ninety-nine years (2002 and 2007 respectively);

"The grant to Japanese subjects of the right to lease land in the interior of 'South Manchuria' -- i.e., outside those areas opened by treaty or otherwise to foreign residence and trade:

10                 "(4) The grant to Japanese subjects of the  
11 right to travel, reside and conduct business in the  
12 interior of South Manchuria and to participate in  
13 joint Sino-Japanese agricultural enterprises in  
14 Eastern Inner Mongolia.

"The legal right of the Japanese to enjoy these grants and concessions depended entirely upon the validity of the Treaty and Notes of 1915, and the Chinese continuously denied that these were binding upon them. No amount of technical explanation or argument could divest the minds of the Chinese people, officials or laymen, of their conviction that the term 'Twenty-one Demands' was practically synonymous with the 'Treaties and Notes of 1915' and that China's aim should be to free herself from them. At the Paris Conference, 1919, China demanded their abrogation

on the ground that they had been concluded 'under  
1 coercion of a Japanese ultimatum threatening war.'  
2 At the Washington Conference, 1921-22, the Chinese  
3 delegation raised the question 'as to the equity and  
4 justice of these agreements and therefore as to their  
5 fundamental validity,' and, in March 1923, shortly  
6 before the expiration of the original twenty-five-year  
7 lease of the Liaotung (Kwantung) Territory which  
8 China granted in 1898 to Russia, the Chinese Govern-  
9 ment communicated to Japan a further request for the  
10 abrogation of the provisions of 1915, and stated that  
11 'the Treaties and Notes of 1915 have been consistently  
12 condemned by public opinion in China.' Since the  
13 Chinese maintained that the agreements of 1915 lacked  
14 'fundamental validity,' they declined to carry out  
15 the provisions relating to Manchuria except in so far  
16 as circumstances made it expedient to do so.  
17

"The Japanese complained bitterly of the con-  
18 sequent violations of their treaty rights by the Chinese.  
19 They contended that the Treaties and Notes of 1915  
20 were duly signed and ratified and were in full force.  
21 To be sure, there was a considerable body of public  
22 opinion in Japan which from the first did not agree  
23 with the 'Twenty-one Demands;' and, more recently, it  
24 has been common for Japanese speakers and publicists  
25

1 to criticize this policy. But the Japanese Government  
2 and people appeared unanimous in insisting upon the  
3 validity of those provisions which related to Man-  
4 churia.

5 "Two important provisions in the Treaty and  
6 Notes of 1915 were those for the extension of the  
7 lease of the Kwantung Territory from twenty-five to  
8 ninety-nine years, and of the concessions of the  
9 South Manchuria and the Antung-Mukden Railways to a  
10 similar period of ninety-nine years. For the dual  
11 reasons that these extensions were a result of the  
12 1915 agreements and that recovery of the territories  
13 originally leased by former Governments was included  
14 in the Nationalist 'Rights Recovery' movement directed  
15 against foreign interests in China, the Kwantung  
16 Leased Territory and the South Manchuria Railway were  
17 made objects, at various times, of agitation and even  
18 diplomatic representation on the part of the Chinese.  
19 The policy of Marshal Chang Hsueh-liang of declaring  
20 Manchuria's allegiance to the Central Government and  
21 of permitting the spread of Kuomintang influence in  
22 Manchuria made these issues acute after 1928, although  
23 they remained in the background of practical politics.

24 "Associated also with the Treaty and Notes  
25 of 1915 was the agitation for the recovery of the

1 South Manchuria Railway, or for stripping that insti-  
2 tution of its political character in order to reduce  
3 it to a purely economic enterprise. As the earliest  
4 date fixed for the recovery of this railway on repay-  
5 ment of the capital and interest outlay was 1939, the  
6 mere abrogation of the 1915 Treaties would not in  
7 itself have recovered the South Manchuria Railway for  
8 China. It was extremely doubtful whether China, in  
9 any case, would have been able to obtain the capital  
10 for this purpose. The occasional utterances of Chi-  
11 nese Nationalist spokesmen, urging recovery of the  
12 South Manchuria Railway, served as an irritant to the  
13 Japanese, whose legitimate rights and interests were  
14 thereby threatened."

15 I pass to page 53, the beginning of the fifth  
16 full paragraph:

17 "The Sino-Japanese Treaty of 1915 provided  
18 that 'Japanese subjects shall be free to reside and  
19 travel in South Manchuria and to engage in business  
20 and manufacture of any kind whatsoever.' This was an  
21 important right, but one which was objectionable to the  
22 Chinese, since in no other part of China were foreigners  
23 as a class permitted to reside and to engage in business  
24 outside the Treaty Ports. It was the policy of the  
25 Chinese Government to withhold this privilege until

1 extra-territoriality should be established and foreigners  
2 should be subject to Chinese laws and jurisdiction.

3 "In South Manchuria, however, this right  
4 had certain limitations: the Japanese were required  
5 to carry passports and observe Chinese laws and regu-  
6 lations while in the interior of South Manchuria; but  
7 the Chinese regulations applicable to Japanese were  
8 not to be enforced until the Chinese authorities had  
9 first 'come to an understanding with the Japanese  
10 Consul.'

11 "On many occasions, the action of the  
12 Chinese authorities was inconsistent with the terms of  
13 this agreement, the validity of which they always  
14 contested. The fact that restrictions were placed  
15 upon the residence, travel and business activities  
16 of Japanese subjects in the interior of South Man-  
17 churia, and that orders and regulations were issued by  
18 various Chinese officials prohibiting Japanese or other  
19 foreigners from residing outside the Treaty Ports or  
20 from renewing leases of buildings is not contested  
21 in the documents officially presented to the Commission  
22 by the Chinese Assessor. Official pressure, sometimes  
23 supported by severe police measures, was exerted upon  
24 the Japanese to force them to withdraw from many  
25 cities and towns in South Manchuria and Eastern Inner

1 Mongolia, and upon Chinese property owners to prevent  
2 them from renting houses to Japanese. It was stated  
3 by the Japanese that the Chinese authorities also  
4 refused to issue passports to Japanese, harassed them  
5 by illegal taxes, and, for some years before September  
6 1931, failed to carry out the stipulation in the agree-  
7 ment by which they had undertaken to submit to the  
8 Japanese Consul the regulations which were to be  
9 binding upon the Japanese."

10           Passing to page 54, the second and third  
11 paragraphs:

12           "Closely associated with the right to reside  
13 and to do business in the interior of South Manchuria  
14 was the right to lease land, which was granted to  
15 Japanese by the Treaty of 1915 in the following  
16 terms: 'Japanese subjects in South Manchuria may,  
17 by negotiation, lease land necessary for erecting  
18 suitable buildings for trade and manufacture or for  
19 prosecuting agricultural enterprises.' An exchange of  
20 notes between the two Governments at the time of the  
21 treaty defined the expression 'lease by negotiation'  
22 to imply, according to the Chinese version, 'a long-  
23 term lease of not more than thirty years and also the  
24 possibility of its unconditional renewal;' the Japanese  
25 version simply provided for 'leases for a long term'

1 up to thirty years and unconditionally renewable.'  
2 Disputes naturally arose over the question whether the  
3 Japanese land leases were, at the sole option of the  
4 Japanese, 'unconditionally renewable.'

5 "The Chinese interpreted the desire of the  
6 Japanese to obtain lands in Manchuria, whether by lease,  
7 purchase, or mortgage, as evidence of a Japanese  
8 national policy to 'buy Manchuria.' Their authorities  
9 therefore very generally attempted to obstruct efforts  
10 of the Japanese to this end, and became increasingly  
11 active in the three or four years preceding September  
12 1931, a period during which the Chinese 'Rights-  
13 Recovery Movement' was at its height."

14 I omit the next paragraph.

15 "Chinese officials, however, did not accept  
16 the validity of the treaty and consequently put every  
17 obstacle in the way of Japanese leasing land by orders,  
18 provincial and local, calculated to make the leasing  
19 of lands to Japanese punishable under the criminal  
20 laws; by imposition of special fees and taxes payable in  
21 advance on such leases; and by instructions to local  
22 officials prohibiting them, under threat of punishment,  
23 from approving such transfers to Japanese."

24 I pass to page 55, Section 5, "The Korean  
25 Problem in Manchuria.

1        "The Japanese admit that the Chinese suspicion  
2        was the principal cause of Chinese 'oppression' of  
3        the Koreans, but vigorously deny the allegation that  
4        they pursued any definite policy of encouraging  
5        Korean migration to Manchuria, stating that 'Japan  
6        having neither encouraged nor restricted it, the  
7        Korean emigration to Manchuria must be regarded as  
8        the outcome of a natural tendency,' a phenomenon  
9        uninfluenced by any political or diplomatic motives.  
10       They therefore declare that 'the fear on the part of  
11       China that Japan is plotting the absorption of the  
12       two regions by making use of Korean immigrants is  
13       entirely groundless.'

14       "These irreconcilable views intensified such  
15       problems as those related to the leasing of land,  
16       questions of jurisdiction and the Japanese consular  
17       police, these having created a most unfortunate  
18       situation for the Koreans and embittered Sino-Japanese  
19       relations.

20       "There exist no Sino-Japanese agreements which  
21       specifically grant or deny the right of Koreans to  
22       settle, reside, and conduct occupations outside the  
23       Treaty Ports, or to lease or otherwise acquire land  
24       in Manchuria, except in the so-called Chientao District.  
25       Probably, however, over 400,000 Koreans do live in

1 Manchuria outside Chientao. They are widely dis-  
2 tributed, especially in the eastern half of Manchuria,  
3 and are numerous in the regions lying north of Korea,  
4 in Kirin Province, and have penetrated in large numbers  
5 into the region of the eastern section of the Chinese  
6 Eastern Railway, the lower Sungari valley and along  
7 the Sino-Russian border from North-Eastern Korea to  
8 the Ussuri and the Amur River valleys, their migration  
9 and settlement having overflowed into the adjoining  
10 territories of the U.S.S.R. Moreover, partly because  
11 a very considerable group of the Koreans are natives  
12 of Manchuria, their ancestors having immigrated  
13 generations ago, and partly because others have  
14 renounced their allegiance to Japan and have become  
15 naturalised Chinese subjects, a great many Koreans  
16 today actually possess agricultural lands in Manchuria,  
17 outside of Chientao, both by virtue of freehold title  
18 and leasehold. The vast majority, however, cultivate  
19 paddy fields simply as tenant farmers under rental  
20 contracts, on a crop-division basis, with the Chinese  
21 landlords, these contracts usually being limited to  
22 periods from one to three years, renewable at the  
23 discretion of the landlord.

24 "The Chinese deny that the Koreans have the  
25 right to purchase or lease agricultural lands in

1 Manchuria outside the Chientao District, since the  
2 only Sino-Japanese agreement on the point is the  
3 Chientao Agreement of 1909, which is restricted in  
4 its application to that area. Only Koreans who are  
5 Chinese subjects, therefore, are entitled to purchase  
6 land, or, for that matter, to reside and lease land  
7 in the interior of Manchuria. In denying the claim  
8 of right of the Koreans to lease land freely in Man-  
9 churia, the Chinese Government has contended that the  
10 Chientao Agreement of 1909, which granted Koreans the  
11 right of residence with special landholding privi-  
12 leges in the Chientao District alone and specified that  
13 the Koreans were to be subject to Chinese jurisdiction,  
14 is in itself a self-contained instrument 'purporting  
15 to settle, by mutual concessions, local issues then  
16 pending between China and Japan in that area.' The  
17 Chientao Agreement contained a quid pro quo, Japan  
18 waiving the claim of jurisdiction over the Koreans,  
19 China granting them the special privilege of possessing  
20 agricultural lands.

21 "Both countries continued to observe the  
22 agreement after the annexation of Korea by Japan in  
23 1910, China contending that the Treaty and Notes of  
24 1915 could not alter the stipulations of the Chientao  
25 Agreement, especially as the new Treaty contained a

1 clause specifying that 'all existing treaties between  
2 China and Japan relating to Manchuria shall, except  
3 as otherwise provided for by this Treaty, remain in  
4 force.' No exception was made for the Chientao Agree-  
5 ment. The Chinese Government further contends that  
6 the Treaty and Notes of 1915 do not apply to the  
7 Chientao District, since the latter is not geographically  
8 a part of 'South Manchuria' -- a term which is ill-  
9 defined both geographically and politically.

10 "This Chinese contention has been contested by  
11 the Japanese since 1915, their position being that,  
12 inasmuch as the Koreans became Japanese subjects by  
13 virtue of the annexation of Korea in 1910, the pro-  
14 visions of the Sino-Japanese Treaty and Notes of  
15 1915 concerning South Manchuria and Eastern Inner  
16 Mongolia, which grant Japanese subjects the right to  
17 reside and lease lands in South Manchuria and to par-  
18 ticipate in joint agricultural enterprises in  
19 Eastern Inner Mongolia, apply equally to the Koreans.  
20 The Japanese Government has contended that the Chien-  
21 tao Agreement was superseded by those provisions of  
22 the 1915 agreements in conflict therewith, that the  
23 Chinese contention that the Chientao Agreement is a  
24 self-contained instrument is untenable, since the  
25 right secured by the Koreans in Chientao was actually

1       in consequence of Japan's agreement to recognise  
2       that region as a part of Chinese territory. It asserts  
3       that it would be discriminatory on its part to refrain  
4       from seeking for the Koreans in Manchuria rights and  
5       privileges granted to other Japanese subjects.

6                    MR. WARREN: "The Japanese reason for favouring  
7       the acquisition of land by Koreans in Manchuria is  
8       partly due to their desire to obtain rice exports  
9       for Japan, a desire which, so far, has been but partly  
10      satisfied, since probably half the rice production of  
11      over seven million bushels in 1930 is consumed  
12      locally, and the export of the balance has been re-  
13      stricted. The Japanese assert that the Korean tenants,  
14      after having reclaimed waste lands and making them  
15      profitable for the Chinese owners, have been unjustly  
16      ejected. The Chinese, on the other hand, while  
17      equally desirous of having the cultivable lowlands  
18      producing rice, have generally employed the Koreans  
19      as tenants or labourers to prevent the land itself  
20      from falling into Japanese hands. Many Koreans have  
21      therefore become naturalised Chinese subjects in order  
22      to possess land, some of them, however, having acquired  
23      such titles, transferring them to Japanese land-mortgage  
24      associations. This suggests one reason why there has  
25      been a difference of opinion among the Japanese

themselves as to whether naturalisation of Koreans  
1 as Chinese subjects should be recognized by the  
2 Japanese Government.

3 "Under a Chinese Nationality Law of 1914,  
4 only aliens who, under the law of their own country,  
5 were permitted to become naturalised in another were  
6 capable of being naturalised Chinese subjects. The  
7 Chinese revised Nationality Law of February 5th,  
8 1929, however, contained no provision by which an  
9 alien was required to lose his original nationality  
10 in order to acquire Chinese nationality. Koreans were  
11 therefore naturalised as Chinese regardless of the  
12 Japanese insistence that such naturalisation could  
13 not be recognised under Japanese law. The Japanese  
14 nationality laws have never permitted Koreans to lose  
15 their Japanese nationality and, although a revised  
16 Nationality Law of 1924 contained an article to the  
17 effect that 'a person who acquires foreign nationality  
18 voluntarily loses Japanese nationality,' this general  
19 law has never been made applicable to the Koreans by  
20 special Imperial Ordinance. Nevertheless, many  
21 Koreans in Manchuria, varying from 5 to 20 per cent  
22 of the total Korean population in certain districts,  
23 especially where they are relatively inaccessible by  
24 the Japanese consular officials, have become naturalised  
25

1 as Chinese. Others, incidentally, when migrating  
2 beyond the Manchurian borders into Soviet territory,  
3 have become citizens of the U.S.S.R.

4 "This problem of dual nationality of the  
5 Koreans influenced the National Government of China  
6 and the provincial authorities in Manchuria generally  
7 to look with disfavour upon indiscriminate natura-  
8 lisation of Koreans, fearing that they might, by  
9 temporarily acquiring Chinese nationality, become  
10 potential instruments of a Japanese policy of  
11 acquiring agricultural lands. In Regulations issued  
12 by the Kirin Provincial Government, September 1930,  
13 governing the purchase and sale of land throughout  
14 the province, it was provided that 'when a naturalised  
15 Korean purchases land, investigation must be made in  
16 order to discover whether he wants to purchase it as  
17 a means of residing as a permanently naturalised  
18 citizen or on behalf of some Japanese.' The local  
19 district officials, however, seem to have wavered in  
20 their attitude, at times enforcing the orders of the  
21 higher authorities, but frequently issuing temporary  
22 naturalisation certificates in lieu of formal certi-  
23 ficates requiring the approval of the provincial  
24 government and the Ministry of the Interior at Nanking.  
25 These local officials, especially in areas far removed

1 from Japanese consulates, often readily consented to  
2 the issuing of such certificates to the Koreans who  
3 applied for them and, on occasion, no doubt actually  
4 compelled the Koreans to become naturalised or to  
5 leave the country, their actions being influenced both  
6 by the policy of the Japanese and by the revenue  
7 derivable from the naturalisation fees. The Chinese  
8 have asserted, moreover, that some Japanese themselves  
9 actually connived at this business of naturalising  
10 Koreans in order to use them as dummy land-owners or  
11 to acquire lands by transfer from such naturalised  
12 Koreans. Generally speaking, however, the Japanese  
13 authorities discountenanced naturalisation of Koreans  
14 and assumed jurisdiction over them wherever possible.

15 "The Japanese claim of right to maintain  
16 consular police in Manchuria as a corollary of extra-  
17 territoriality became a source of constant conflict  
18 where the Koreans were involved. Whether the Koreans  
19 desired such Japanese interference, ostensibly in  
20 their behalf, or not, the Japanese consular police,  
21 especially in the Chientao District, undertook, not  
22 only protective functions, but also freely assumed the  
23 right to conduct searches and seizures of Korean  
24 premises, especially where the Koreans were suspected  
25 of being involved in the Independence Movement, or

1 in Communist or anti-Japanese activities. The  
2 Chinese police, for their part, frequently came into  
3 collision with the Japanese police in their efforts to  
4 enforce Chinese laws, preserve the peace, or suppress  
5 the activities of 'undesirable' Koreans. Although the  
6 Chinese and Japanese police did cooperate on many  
7 occasions, as provided for in the so-called 'Mitsuya  
8 Agreement' of 1925, in which it was agreed that, in  
9 Eastern Fengtien Province, the Chinese would suppress  
10 'the Korean societies' and turn over 'Koreans of bad  
11 character' to the Japanese on the latter's request,  
12 the actual state of affairs was really one of constant  
13 controversy and friction. Such a situation was bound  
14 to cause trouble.

15 "The Korean problems and the resulting Sino  
16 Japanese relations over the Chientao District had  
17 attained a peculiarly complicated and serious character.  
18 Chientao (called 'Kanto' in Japanese and 'Kando' in  
19 Korean) comprises the three districts of Yenchi,  
20 Holung and Wangching in Liaoning (Fengtien) Province,  
21 and, in practice, as evidenced by the attitude of the  
22 Japanese Government, includes also the district of  
23 Hunchun, which four districts adjoin the north-  
24 east corner of Korea just across the Tumen River.  
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"The Japanese, describing the traditional attitude of the Koreans towards the Chientao area, have been disinclined to admit that the Chientao Agreement of 1909 closed once and for all the issue whether this territory should belong to China or to Korea, the idea being that, since the district is predominantly Korean, over half of the arable land being cultivated by them, 'they have so firmly established themselves in the locality that it may practically be regarded as a Korean sphere'. In Chientao, more than elsewhere in Manchuria, the Japanese Government has been insistent on exercising jurisdiction and surveillance over the Koreans, over 400 Japanese consular police having been maintained there for years. The Japanese Consular Service, in cooperation with Japanese functionaries assigned by the Government-General of Chosen, exercise broad powers of an administrative character in the region, their functions including maintenance of Japanese schools, hospitals and Government-subsidized financing media for the Koreans. The area is regarded as a natural outlet for Korean emigrants who cultivate rice fields, while politically it has special importance, since Chientao has long been a refuge of Korean independence advocates, Communist groups and other

1 disaffected anti-Japanese partisans, a region where,  
2 as evidenced by the Hunchun Rising of Koreans against  
3 the Japanese in 1920, after the Independence Outbreak  
4 in Korea, the Japanese have had serious political  
5 problems intimately associated with the general prob-  
6 lem of governance of Korea. The military importance  
7 of this region is obvious from the fact that the lower  
8 reaches of the Tumen River form the boundary between  
9 Japanese, Chinese and Soviet territory.

10 "The Chientao Agreement provided that 'the  
11 residence of Korean subjects, as heretofore, on  
12 agricultural lands lying north of the River Tumen',  
13 should be permitted by China; that Korean subjects  
14 residing on such lands should henceforth 'be amenable  
15 to the jurisdiction of the Chinese local officials';  
16 that they should be given equal treatment with the  
17 Chinese; and that, although all civil and criminal  
18 cases involving such Koreans should be 'heard and  
19 decided by the Chinese authorities', a Japanese consular  
20 official should be permitted to attend the court,  
21 especially in capital cases, with the right to 'apply  
22 to the Chinese authorities for a new trial' under  
23 special Chinese judicial procedure.

24 "The Japanese, however, have taken the position  
25 that the Sino-Japanese Treaty and Notes of 1915

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1       nationality as a necessary condition of obtaining  
2       the right to purchase land in Chientao. Japanese  
3       official figures represent over half the arable  
4       land of Chientao (including Hunchun) as 'owned' by  
5       Koreans, their figures admitting that over 15 percent  
6       of the Koreans there have become naturalized as Chinese  
7       subjects. Whether it is these naturalized Koreans who  
8       'own' those lands is impossible to say. Such a situa-  
9       tion naturally gave rise to numerous irregularities  
10      and constant differences, often manifested by open  
11      clashes between the Chinese and Japanese police.

12      "The Japanese assert that, about the end of  
13      1927, a movement for persecuting Korean immigrants in  
14      Manchuria broke out, under Chinese official instiga-  
15      tion, as an aftermath of a general anti-Japanese  
16      agitation, and state that this oppression was intensified  
17      after the Manchurian provinces declared their allegiance  
18      to the National Government at Nanking. Numerous trans-  
19      lations of orders issued by the central and local  
20      Chinese authorities in Manchuria have been submitted  
21      as evidence to the Commission of a definite Chinese  
22      policy of oppressing the Koreans by forcing them to  
23      become naturalized as Chinese, driving them from  
24      their rice fields, compelling them to re-migrate, sub-  
25      jecting them to arbitrary levies and exorbitant

1 taxation, preventing them from entering into con-  
2 tracts of lease or rental for houses and lands, and  
3 inflicting upon them many brutalities. It is  
4 stated that this campaign of cruelty was particularly  
5 directed against the 'pro-Japanese' Koreans, that  
6 Korean Residents' Associations, which are subsidized  
7 by the Japanese Government, were the objects of per-  
8 secution, that non-Chinese schools maintained by or  
9 for the Koreans were closed, that 'undesirable Koreans'  
10 were permitted to levy blackmail and perpetrate  
11 atrocities upon Korean farmers, and that Koreans were  
12 compelled to wear Chinese clothing and renounce any  
13 claim of reliance upon Japanese protection or assist-  
14 ance in their miserable plight.

15 "The fact that the Manchurian authorities  
16 did issue orders discriminatory against non-naturalized  
17 Koreans is not denied by the Chinese, the number and  
18 character of these orders and instructions, especially  
19 since 1927, establishing beyond a doubt that the  
20 Chinese authorities in Manchuria generally regarded  
21 the Korean infiltration, in so far as it was accompanied  
22 by Japanese jurisdiction, as a menace which deserved  
23 to be opposed.

25 "Because of the seriousness of the Japanese  
allegations and the pitiable plight of the Korean

1 population of Manchuria, the Commission gave special  
2 attention to this subject and, without accepting all  
3 these accusations as adequately descriptive of the  
4 facts, or concluding that certain of these restrictive  
5 measures applied to the Koreans were entirely unjusti-  
6 fied, is in a position to confirm this general descrip-  
7 tion of the Chinese actions towards the Koreans in  
8 certain parts of Manchuria. While in Manchuria,  
9 numerous delegations who represented themselves as  
10 spokesmen of Korean communities, were received by the  
11 Commission.

12 "It is obvious that the presence of this  
13 large minority of Koreans in Manchuria served to  
14 complicate the Sino-Japanese controversies over land  
15 leasing, jurisdiction and police, and the economic  
16 rivalries which formed a prelude to the events of  
17 September 1931. While the great majority of the  
18 Koreans only wanted to be left alone to earn their  
19 livelihood, there were among them groups which were  
20 branded by the Chinese or Japanese, or both, as  
21 'undesirable Koreans', including the advocates and  
22 partisans of the independence of Korea from Japanese  
23 rule, Communists, professional law breakers, including  
24 smugglers and drug traders, and those who, in league  
25 with Chinese bandits, levied blackmail or extorted

1 money from those of their own blood. Even the Korean  
2 farmer himself frequently invited oppression by his  
3 ignorance, improvidence and willingness to incur in-  
4 debtiness to his more agile-minded landlord.

5 "Aside from the involvement of the Koreans,  
6 however unwittingly, in the controversies which, in  
7 the Chinese view, were the inevitable results of  
8 the general Japanese policies with respect to Man-  
9 churia, the Chinese submit that much of what has been  
10 termed 'oppression' of the Koreans should not properly  
11 be so called, and that certain of the measures taken  
12 against the Koreans by the Chinese were actually  
13 either approved or connived at by the Japanese author-  
14 ities themselves. They assert that it should not be  
15 forgotten that the great majority of the Koreans are  
16 bitterly anti-Japanese and unreconciled to the Japanese  
17 annexation of their native land, and that the Korean  
18 emigrants, who would never have left their homeland  
19 but for the political and economic difficulties under  
20 which they have suffered, generally desire to be free  
21 from Japanese surveillance in Manchuria.  
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1                 "The Chinese, while admitting a certain  
2 sympathy with the Koreans, draw attention to the  
3 existence of the 'Mitsuya Agreement' of June-July  
4 1925 as evidence both of a willingness on the part  
5 of the Chinese authorities to curb the activities of  
6 Koreans whom the Japanese consider 'bad characters'  
7 and a menace to their position in Korea, and of  
8 official sanction on the part of the Japanese them-  
9 selves for certain of those very acts which the  
10 Japanese would have others believe are instances of  
11 Chinese 'oppression' of the Koreans. This agreement,  
12 which has never been widely known abroad, was  
13 negotiated by the Japanese Police Commissioner of  
14 the Government-General of Chosen and the Chinese  
15 Police Commissioner of Fengtien Province. It  
16 provided for cooperation between the Chinese and  
17 Japanese police in suppressing 'Korean societies'  
18 (presumably of an anti-Japanese character) in  
19 Eastern Fengtien Province, stipulating that 'the  
20 Chinese authorities shall immediately arrest and  
21 extradite those leaders of the Korean societies whose  
22 names had been designated by the authorites of  
23 Korea,' and that Koreans of 'bad character' should  
24 be arrested by the Chinese police and turned over  
25 to the Japanese for trial and punishment. The

1 Chinese assert, therefore, that 'it is largely for  
2 the purpose of giving practical effect to this  
3 agreement that certain restrictive measures have  
4 been put into force governing the treatment of  
5 Koreans. If they are taken as evidence proving  
6 the oppression of Koreans by Chinese authorities,  
7 then such measures of oppression, if indeed they  
8 are, have been resorted to principally in the  
9 interest of Japan.' Furthermore, the Chinese  
10 submit that, 'in view of the keen economic compe-  
11 tition with native farmers, it is but natural  
12 that the Chinese authorities should exercise their  
13 inherent right to take measures to protect the  
14 interests of their own countrymen.'"

15           If your Honor pleases, that completes our  
16 reading of the Lytton Report in this subsection  
17 of our case, and at this time, if the Court pleases,  
18 we desire to offer in evidence defense document  
19 No. 189, which is the Japanese Government's  
20 official reply to the Lytton Report.

22           MR. COMYNS CARR: If it please your Honor,  
23 we object to this document, which is an argumenta-  
24 tive criticism apparently issued by the Japanese  
25 Government after the Lytton Report had been pre-  
sented to the League of Nations. They had the

1       fullest opportunity of placing before the Lytton  
2       Commission any evidence or argument which they  
3       wished to place before them, as appears from  
4       pages 11 and 12 of the Lytton Report itself. They  
5       did place large quantities of evidence and docu-  
6       ments before the Lytton Commission. They also had  
7       a Japanese assessor sitting with the Commission as  
8       the Chinese did, each being entitled to see and  
9       comment upon any materials submitted by the other.  
10      In our submission, if the defense desires to  
11      challenge the correctness of any statement con-  
12      tained in the Lytton Report this is not the way to  
13      do it, by seeking to read a document of thirty-eight  
14      pages full of argument, opinions, conclusions, and  
15      assertions of the Japanese Government without any  
16      evidence in support of them.  
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18           THE PRESIDENT: Well, these accused are  
19      not bound by the Lytton Report. If Japan were on  
20      trial that might be a good argument. However, as  
21      you say, Mr. Carr, we cannot admit anything in the  
22      nature of argument, but this document may contain  
23      a number of statements of fact which would have some  
24      probative value. We are not going to turn this  
25      inquiry into a determination of the respective  
      merits of the Lytton Report and the Japanese reply,

1 certainly. We understood that the defense were  
2 not contesting any findings in the Lytton Report  
3 but desired to clarify certain findings; but they  
4 are not bound by those findings. However, the  
5 Judges will take advantage of the recess to  
6 peruse this document to see whether it has any  
7 probative value.

8 We will recess for fifteen minutes.

9 (Whereupon, at 1445, a recess  
10 was taken until 1500, after which the  
11 proceedings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: The Tribunal thinks that  
4 this document which has just been tendered contains  
5 practically nothing but argument. If there are any  
6 facts in it not covered by the Lytton Report which  
7 it is desired to prove, that can be done independently  
8 of a document emanating from such a source. It is  
9 not merely because it comes from the Japanese, but  
10 because it comes from a party that was attacked by  
11 the Commission, and these people are not identified  
12 with that party yet.

13 We understand that you are not attacking  
14 the Commission's findings. If you reach the stage  
15 when you attack those findings, you may adopt the  
16 Japanese Government's argument. So far as that  
17 argument is based on facts not appearing in the  
18 Lytton Report, you may prove those facts, but inde-  
19 pendently of this method; so that we are, in effect,  
20 not shutting out either the argument or the facts  
21 contained in the statement, but we insist on their  
22 use and proof in the proper way. The objection is  
23 upheld and the document rejected.

24 MR. WARREN: Your Honor, we have not been  
25 permitted to state our position with reference to

1 this document, and I think the Court is under some  
2 misconception with reference to our position relative  
3 to the Lytton Report. I should like to, with the  
4 Tribunal's permission, state the reason for the  
5 introduction of this at this time.

6 THE PRESIDENT: If we had shut out the  
7 argument and whatever facts it contains completely,  
8 we would listen to you. We have not done this, but  
9 we do not think you are proceeding in the right way  
10 to establish either.

11 MR. WARREN: May I be permitted to clarify  
12 our position relative to the Lytton Report? I am  
13 certain that the Tribunal is under a misapprehension  
14 as to our attitude towards it.

15 THE PRESIDENT: We would be very pleased to  
16 hear your attitude. It would be very helpful to know  
17 it, Colonel.

18 MR. WARREN: The Lytton Report, in our opinion,  
19 is divided into findings and into conclusions based  
20 upon those findings. We do not agree with the con-  
21 clusions reached by the Commission, that is, Lord  
22 Lytton's Committee; and so, to that extent, we are  
23 not in agreement with the Lytton Report. We feel that  
24 the findings -- not the findings but the conclusions  
25 of the Lytton Commission were erroneous with reference

1 to the facts presented to it. That would be with  
2 reference to the technical rules of evidence that  
3 would be applied because there they were not.

4 THE MONITOR: Mr. Warren, will you repeat  
5 that statement, please?

6 THE PRESIDENT: Let the shorthand writer  
7 read it.

8 (Whereupon, the official court reporter  
9 read Mr. Warren's last statement.)

10 THE PRESIDENT: I don't think they can give  
11 that any clear meaning so you had better repeat what  
12 you said in different words.

13 MR. WARREN: The rules of evidence as applied  
14 by the Tribunal or a court were not used by Lord  
15 Lytton's Commission in arriving at the conclusions.  
16 We feel that other influences outside of the contents  
17 of the Lytton Report itself might have had a great  
18 bearing upon the ultimate conclusions reached by the  
19 Lytton Report --I mean in the Lytton Report. Insofar  
20 as their findings of facts or their recitation of  
21 facts are concerned, we have little quarrel, if any,  
22 with those, but --

23 THE PRESIDENT: Well, all that is of any use  
24 to you in the document we have just rejected is the  
25 argument, and you can adopt that without tendering

1 the document.

2 MR. WARREN: Your Honor, we have not offered  
3 it for the argument that is in it. We realize we  
4 could adopt it. However, this is the official view  
5 of the Japanese Government at that time and reflects  
6 the opinion of the Japanese Government at the time.  
7 We offer this as documentary evidence. We may or  
8 may not adopt this in our final arguments and  
9 presentation of our final cases, but this --

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1                   THE PRESIDENT: We are having great diffi-  
2                   culty with the translation. I don't know why. But  
3                   do speak in clear, short sentences. They are having  
4                   difficulty with me, too. I don't know why, but per-  
5                   haps I am not as short and clear as I should be.

6                   MR. WARREN: We had only intended, incident-  
7                   ally, your Honor, to read just the reply that per-  
8                   tains to this particular part of the case. It isn't  
9                   half of the document. We feel the mental attitude  
10                  of the accused in any criminal case at the time of  
11                  the commission or during the continuation of an  
12                  alleged conspiracy is of prime importance, and that  
13                  is the reason for this document. That is the reason  
14                  we have offered it. We think our position in offer-  
15                  ing this documentary evidence is sound. It goes  
16                  to show the state of mind of the Japanese and per-  
17                  haps of some of the accused that may be concerned.

18                  That is all, your Honor.

19                  THE PRESIDENT: There is no reason for us to  
20                  change our decision.

21                  MR. WARREN: Well, your Honor, I am not  
22                  quite certain what your Honor's ruling on this was,  
23                  but I would like to offer it for identification,  
24                  make an offer of proof on it, so that it may be con-  
25                  sidered by the reviewing authorities at a later date.

1                   THE PRESIDENT: You can always make an  
2 application at any time, Colonel.

3                   MR. WARREN: I would like to offer it for  
4 identification only.

5                   THE PRESIDENT: That clutters up the record  
6 with rejected material. That is the objection.

7                   MR. WARREN: Then, at this time, if the  
8 Tribunal please, I should like to make an offer of  
9 proof of defense document No. 189, which are the  
10 observations of the Japanese Government on the  
11 report of the Commission of Inquiry, dated December  
12 10, 1931, which refers to the Lytton Report. The  
13 document contains an analytical analysis of the report  
14 and advances the argument of the Japanese Government  
15 at a time shortly after the action by the League of  
16 Nations -- I mean before the action by the League  
17 of Nations, and is a document which unquestionably  
18 was considered by the League of Nations in arriving  
19 at a final conclusion on the Japanese question  
20 before them at that time. We ask permission of the  
21 Tribunal to permit us in our briefs of the case at  
22 the conclusion of this trial to annex this document  
23 and forward it to the reviewing authority as a part  
24 of our brief.  
25

THE PRESIDENT: We do not control the

1 material that reaches him.

2 MR. WARREN: Your Honor, by excluding an  
3 offer -- I mean by excluding us from permitting a  
4 document to be marked for identification, it will  
5 not go up to the reviewing authority, and we want  
6 it to go, and that is the reason why we ask it to  
7 be marked for identification. I am basing that on  
8 my experience as a Judge Advocate. I think it will  
9 be borne out by the American Judge.

10 THE PRESIDENT: It will be time enough to  
11 make this application if an adverse verdict is  
12 reached.

13 MR. WARREN: Thank you, your Honor. That  
14 clarifies the situation in my mind considerably and  
15 is quite a relief to me. Thank you very much.

16 Now, if the Court please, in order to in  
17 a measure confirm the findings of the Lytton Report  
18 and to show that the conditions in China prior to the  
19 Mukden Incident were even more chaotic than described  
20 in the Lytton Report, we desire to offer and read  
21 and make comment on documents which we now desire  
22 to present to the Tribunal for its consideration.

23 (To the Monitor) You have that.

24 THE MONITOR: Thank you.

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1       First of all, we desire to make reference  
2 to exhibit No. 228 -- I think that is the document --  
3 I believe that it is an error on their part, your Honor.  
4       First of all, reference will be made to exhibit  
5 No. 2283, defense document 74 and exhibit No. 2284,  
6 formerly defense document 78, and exhibit No. 2285,  
7 defense document 196. That is in order to show that  
8 Japan acquired the sovereignty of the Liaotung Peninsula  
9 by virtue of the Sino-Japanese Peace Treaty signed  
10 at Simonoseki on April 17, 1875. Reference is particular-  
11 ly made to Articles I and II of exhibit 2283, wherein the  
12 sovereignty of the Liaotung Peninsula was ceded to Japan  
13 by China and was the origin of the Japanese incident in  
14 Manchuria.

15       MR. COMYNS CARR: Your Honor, this is one of a  
16 series of documents, which, in the early stages of the  
17 defense--we objected to and the Court did not rule upon,  
18 but admitted them provisionally saying that the Tribunal  
19 would consider their materiality later. We renew that  
20 submission, particularly now, in view of the fact that  
21 anything material in all this ancient history has been  
22 read from the Lytton Report.

23       THE PRESIDENT: One of my Colleagues can't hear  
24 what you are saying, Colonel Warren. The last statement  
25 you read I think should be repeated. Every Judge must

hear what you say; what everybody says.

1                   MR. WARREN: First of all, reference will  
2 be made to Exhibit No. --

3                   THE PRESIDENT: The court reporter will read  
4 what Colonel Warren said before Mr. Comyns Carr spoke.  
5

6                   (Whereupon, the passage referred to  
7 was read by the official court reporter.)

8                   MR. WARREN: Correction, your Honor, I have  
9 that written. There are some errors. May I read it  
10 again?

11                  THE PRESIDENT: Well, that is a pity to re-read  
12 that. Still, do so.

13                  MR. WARREN: (Reading) First of all, reference  
14 will be made to exhibit No. 2283, defense document 74,  
15 exhibit No. 2284, defense document 78, and exhibit No.  
16 2285, formerly defense document 196, in order to show  
17 that Japan acquired the sovereignty of the Liaotung  
18 Peninsula by virtue of the Sino-Japanese Peace Treaty  
19 signed at Simonoseki on April 17, 1895. Reference  
20 is particularly made to Articles I and II of exhibit  
21 2283, wherein the sovereignty of the Liaotung Peninsula  
22 was ceded to Japan by China and was the origin of the  
23 Japanese interest in Manchuria.

24                  THE PRESIDENT: The only difference appears  
25 to be a mistake in the date.

1           MR. WARREN: There was a mistake in two dates,  
2 and then the words "Japanese incident in Manchuria,"  
3 which was quite a difference, your Honor.

4           I have been informed by my colleagues that these  
5 documents were admitted on the usual terms.

6           THE PRESIDENT: Well, they were admitted at the  
7 request of the prosecution and you are not objecting to  
8 them.

9           MR. WARREN: No, your Honor, these are our  
10 documents.

11          THE PRESIDENT: Are they?

12          Mr. Carr.

13          MR. COMYNS CARR: Your Honor, these documents  
14 were admitted subject to an objection of the prosecution  
15 on which the Tribunal did not then rule. Furthermore,  
16 with regard to this particular first one, my friend's  
17 comments upon it is entirely inaccurate.

18          That Treaty which was afterwards altered, the  
19 Treaty of 1895, provided for the cession of the peninsula  
20 in perpetuity to Japan and was not the foundation  
21 of Japan's rights there at all, but a subsequent  
22 agreement by which it was leased.

23          MR. WARREN: Your Honor, the document has been  
24 read to the Tribunal. It speaks for itself. It says  
25 what I said and I did not say the foundation of Japanese

1 interests, I said the origin of Japanese interests  
2 in Manchuria.

3 THE PRESIDENT: Apparently the prosecution  
4 are pressing for a decision on their objection. I do  
5 not recollect the exact grounds of the objection.

6 MR. WARREN: I have never heard it, your Honor.

7 MR. COMYNS CARR: The original ground of the  
8 objection was the same as the present ground, your Honor,  
9 that the document was irrelevant and immaterial. The  
10 same objection was taken to all these documents and the  
11 Tribunal said they would admit them for the present and  
12 consider their materiality later.

13 MR. WARREN: My Colleagues tell me that it is  
14 their recollection that the argument --

15 THE PRESIDENT: Will you please stop. I am  
16 talking to one of my colleagues. I cannot listen to  
17 you and to them. It is a most difficult point.

18 MR. WARREN: The light blinded me. I couldn't  
19 see, your Honor.

20 THE PRESIDENT: By a majority the document  
21 is admitted. The objection is overruled.

22 MR. WARREN: At this time, your Honor, we desire  
23 to offer in evidence document No. 367 to show that  
24 immediately after the conclusion of the treaty, the  
German Minister in Tokyo gave the Japanese Government

1                   the so-called advice to give up the Liaotung Peninsula.  
2     The advice was given on April 23, 1895, under threat  
3     of war.

4                   THE PRESIDENT: Mr. Tavenner.

5                   MR. TAVENNER: Your Honor, I object to the  
6     introduction of this document on two grounds. This  
7     document, and several documents that follow it, relate  
8     to circumstances under which Japan surrendered possession  
9     of the Liaotung Peninsula, the lease for which was later  
10    transferred to Japan.

11                 Possibly I should repeat the objection. I do  
12    not believe it was translated.

13                 The first objection is that this document, and  
14    several which follow it, relate to circumstances under  
15    which Japan surrendered possession of the Liaotung Peninsula.  
16    Well, Japan later acquired the same rights under  
17    a lease transferred to Japan under the terms of the  
18    Portsmouth Treaty. Therefore, the only rights that  
19    Japan had, arose out of the lease agreement and we take  
20    the position that what occurred prior to that time is  
21    entirely irrelevant and immaterial.

22                 THE PRESIDENT: Well, the evidence is repetitive  
23    I am assured by my colleagues who have made a study of  
24    the Lytton Report. It all appears in that.

25                 MR. TAVENNER: That was my second ground of  
objection.

1                   MR. WARREN: If your Honor please, we do not  
2 take the position we are bound by the Lytton Report.  
3 This is mentioned but I will assure your Honor that  
4 the treaty itself does not appear or that this  
5 telegram doesn't appear. It is additional evidence.  
6 We want to show that three power intervention into the  
7 affairs of Japan and to show the background of this  
8 thing. If the Lytton Report thought it was well  
9 enough to go into it -- if Lord Lytton thought well  
10 enough of it to go into it we feel we should be with-  
11 in our rights to supply the documents which forced  
12 Japan --

13                  THE PRESIDENT: By a majority the document  
14 is admitted. The objection is overruled.

15                  CLERK OF THE COURT: Defense document No. 367  
16 will receive exhibit No. 2380.

17                  (Whereupon, the document above referred  
18 to was marked defense exhibit 2380 and received  
19 in evidence.)

20                  MR. WARREN: Defense document No. 367:

21                  "The German Minister's Advice on the  
22 Retrocession of the Liaotung Peninsula April 23rd,  
23 28th year of Meiji (1895).

24                  Telegram sent No. 348.

25                  "Dispatched 8:45 p.m. April 23rd, 28th year

of Meiji (TN: 1895)

1 "To: Foreign Minister MUTSU, at MAIKO  
2 "Urgent, Code

3 "From: Vice Foreign Minister HAYASHI

4 "Telegram sent No. 349.

5 "Dispatched 8:45 p.m. April 23rd, 28th year  
6 of Meiji.

7 "To Count ITO (through SATO Secretary to the  
8 Foreign Minister, at Hiroshima.)

9 "The German Minister, in an interview with  
10 me, read aloud a note in Japanese to the following  
11 effect:

12 "In accordance with instructions of the  
13 Government I represent I make the following declar-  
14 ation:

15 "'The Government of Germany has found she has  
16 had to reach the conclusion on studying the terms of  
17 the Sino-Japanese Peace Treaty, that the possession  
18 of Liaotung by Japan as demanded would be an obstacle  
19 to permanent peace in the Orient, forever placing  
20 the capitol of China in an unstable position and also  
21 inducing the independence of Korea to come to naught.  
22 Our government, therefore, wishes to advise your  
23 government to abandon the permanent possession of  
24 Liaotung.

"Concerning this declaration I have been  
1 instructed to relate to you the following:

"We beg you to acknowledge that, since the  
2 outbreak of the present Sino-Japanese Incident, my  
3 government has often shown evidence of our sincere  
4 goodwill towards your country. As Your Excellency is  
5 aware of, the British Government proposed to the  
6 European countries on October 7th, of last year; to  
7 intervene in the Sino-Japanese Incident. Germany,  
8 however, refused to join the intervention, at that  
9 time, because of her goodwill towards Japan. On  
10 March 8th, of this year, furthermore, the present  
11 minister advised your government, under the instruction  
12 of my government, to make peace as early as possible  
13 without making excessive demands. At that time, I made  
14 a suggestion that it would be more advantageous to  
15 Japan if you made an early peace without making ex-  
16 cessive demands, as the European countries might  
17 intervene at the request of China. I related further-  
18 more that, if Japan demanded partial cession of the  
19 continent, it would easily provoke the intervention of  
20 the Powers. Your government however, did not comply  
21 with this unselfish advice.

"We find the terms of the present Sino-  
24 Japanese Peace Treaty to be so excessive that they are  
25

**NOTE:**

The attached pages are corrected  
pages and should be substituted for the  
corresponding pages in the record.

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TESSA

1 not only against the interests of the European  
2 countries but also, even though less so to Germany's  
3 interests. At this stage, therefore, the Imperial  
4 Government of His Majesty the German Emperor has to  
5 make a protest against your government and if neces-  
6 sary may even have to take measures to make it  
7 effective. We know that your government has no  
8 reason for refusing concession in this case as after  
9 all I do not believe Japan would care to involve her-  
10 self in a war against three countries. I have also  
11 received private instructions to dispatch telegrams  
12 to my home government in case the Japanese govern-  
13 ment wishes to have a conference held in order to find  
14 a way to recede from her present position without  
15 impairing her honor."

16 Following this, your Honor, there did follow  
17 a series of diplomatic correspondence. Defense docu-  
18 ment No. 385 is the reply of the Japanese government  
19 under date of April 30, 1895, to the memorandum  
20 presented by the German, Russian, and French ministers  
21 in Tokyo and we should like to offer that in evidence  
22 at this time.

23 THE PRESIDENT: Admitted on the usual terms.  
24 Are you going to object? You are very slow.

25 MR. TAVENNER: It is the same objection as was

1 made to the previous document.

2 CLERK OF THE COURT: Defense document  
3 No. 385 will receive exhibit No. 2381.

4 (Whereupon, the document above re-  
5 ferred to was marked defense exhibit No. 2381  
6 and received in evidence.)

7 MR. WARREN: (Reading)

8 "Reply to the Memorandum Presented by the  
9 German, Russian, and French Ministers.

10 "Despatched from KYOTO, April 30, 1895.

11 "To: Minister to Russia NISHI

12 Minister to Germany AOKI

13 Minister to France SONE

14 "From: Foreign Minister MUTSU.

15 "You are requested to have the following  
16 memorandum, which is the reply to the memorandum  
17 presented by the German, Russian and French Ministers  
18 to Japan, translated into French and German and presented  
19 to the German, French and Russian Governments.

20 "The Imperial Government of Japan has most  
21 carefully perused the memorandum presented to it by  
22 the Envoys Extraordinary and Ministers Plenipotentiary  
23 of their Majesties the Emperors of Germany and of  
24 Russia, and of His Excellency the President of the  
25 French Republic in the names of their respective home

1 governments.

2            "The Government of His Majesty the Emperor  
3        of Japan, after having deliberated on the friendly  
4        advice of the Governments of their Majesties the  
5        Emperors of Germany and of Russia and of His Excel-  
6        lency the President of the French Republic, and being  
7        desirous to give proofs again of its laying stress on  
8        the importance of friendly relations maintained  
9        between the two countries, agrees to have the  
10      following modifications made in the Treaty of  
11      Shimonoseki by means of a special supplementary agree-  
12      ment to be drawn up only after the ratifications of the  
13      said Treaty have been exchanged to the complete honour  
14      and dignity of the State of Japan:

15            "I. Our Imperial Government agrees to renounce  
16      all rights of permanent occupation in the Tengtien  
17      Peninsula excepting those concerning the Kin-chow  
18      district. The State of Japan, however, may, on consulta-  
19      tion with the State of China, fix an adequate sum to  
20      be paid in compensation for the renounced territory.

21            "II. It should be known, however, that until  
22      China has completely discharged her obligations to  
23      Japan prescribed by the Treaty, our Imperial Govern-  
24      ment retains as security therefore the right of occu-  
25      pation of the territory above-mentioned.

1                    "On the delivery of this memorandum to the  
2 German, Russian and French Governments, a prompt  
3 answer should be demanded.  
4

5                    "In case the German, Russian and French Govern-  
6 ments appear to be still dissatisfied with the above,  
7 you are requested to inquire, as if for your own  
8 personal information, whether their original memorandum  
9 can in no way be modified or whether they have some  
10 other propositions to make in the way of mediation in  
11 this case."

12                  THE PRESIDENT: We will adjourn until half  
13 past nine tomorrow morning.

14                  (Whereupon, at 1600, an adjournment  
15 was taken until Thursday, 20 March, 1947, at  
16 0930.)  
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